

attendance at that meeting, we were not sure if that would be a good opportunity to discuss with DoJ, or if you would prefer to address this differently. Please advise if you would like to discuss at the Monday meeting with DoJ.

Let me know if you have questions,

Erin S. Koch
Pesticides and Toxic Substances Law Office
Office of General Counsel
US EPA
202-564-1718

Message

From: Knorr, Michele [knorr.michele@epa.gov]
Sent: 6/23/2020 4:19:01 PM
To: Garrison, Scott [Garrison.Scott@epa.gov]; Koch, Erin [Koch.Erin@epa.gov]
Subject: RE: dicamba rehearing

Looking at this now.

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Garrison, Scott <Garrison.Scott@epa.gov>
Sent: Tuesday, June 23, 2020 11:46 AM
To: Koch, Erin <Koch.Erin@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>
Subject: RE: dicamba rehearing

Confidential communication for internal deliberations only. Attorney-client privilege. Do not distribute outside U.S. Government.

For your consideration...

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Koch, Erin <Koch.Erin@epa.gov>
Sent: Tuesday, June 23, 2020 8:50 AM
To: Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Subject: FW: dicamba rehearing

Can one of you start a draft based on David's outline? I'll leave it for you to decide and whether a one-drive version make sense if you want to break it up.

Thanks!

From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Tuesday, June 23, 2020 8:47 AM
To: Koch, Erin <Koch.Erin@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Cc: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>
Subject: RE: dicamba rehearing

Erin:

Thanks for this analysis.

Ex. 5 AC/DP

Could you please prepare a 1-2 pager for Alex and subsequently the Administrator that lays out the rehearing considerations. I envision something that tracks the following outline:

1. 1-paragraph overview of the decision
2. Potential rehearing arguments
3. Considerations in favor of rehearing

Ex. 5 AC/DP

Ex. 5 AC/DP

4. Considerations against rehearing

Ex. 5 AC/DP

5. OGC recommendation:

Ex. 5 AC/DP

Ex. 5 AC/DP

Please work with Kamila on a draft and send to me for review when it's ready. Thanks!

Best,

David

David Fotouhi

Principal Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Koch, Erin <Koch.Erin@epa.gov>

Sent: Thursday, June 18, 2020 5:26 PM

To: Fotouhi, David <Fotouhi.David@epa.gov>

Cc: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>

Subject: dicamba rehearing

David,

The internal deadline for letting DOJ know EPA's recommendation on rehearing in the dicamba case was Wednesday. Given the emergency motion filed by petitioners, the date by when we must file for rehearing could change, but if the Court doesn't reopen the mandate, we would need to seek rehearing by July 18.

As for potential grounds for rehearing, first, there may be other grounds depending on how the Court responds to the emergency motion and we provide our thoughts once we have an opinion.

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

If you think appropriate, Jessica O'Donnell suggested that you might discuss this at Monday's regular meeting with DoJ. I agreed that they should be prepared to tee this up for Jon for discussion. As we are unsure if Matt will be in attendance at that meeting, we were not sure if that would be a good opportunity to discuss with DoJ, or if you would prefer to address this differently. Please advise if you would like to discuss at the Monday meeting with DoJ.

Let me know if you have questions,

Erin S. Koch
Pesticides and Toxic Substances Law Office
Office of General Counsel
US EPA
202-564-1718

Message

From: Koch, Erin [Koch.Erin@epa.gov]
Sent: 6/23/2020 12:47:38 PM
To: Fotouhi, David [Fotouhi.David@epa.gov]; Cole, Joseph E. [cole.josephe@epa.gov]; Knorr, Michele [knorr.michele@epa.gov]; Garrison, Scott [Garrison.Scott@epa.gov]
CC: Lis-Coghlan, Kamila [lis-coghlan.kamila@epa.gov]
Subject: RE: dicamba rehearing

We will get started on that. Thanks for your feedback.

Erin

From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Tuesday, June 23, 2020 8:47 AM
To: Koch, Erin <Koch.Erin@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Cc: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>
Subject: RE: dicamba rehearing

Erin:

Thanks for this analysis. **Ex. 5 AC/DP**

Could you please prepare a 1-2 pager for Alex and subsequently the Administrator that lays out the rehearing considerations. I envision something that tracks the following outline:

1. 1-paragraph overview of the decision
2. Potential rehearing arguments
3. Considerations in favor of rehearing **Ex. 5 AC/DP**
4. Considerations against rehearing **Ex. 5 AC/DP**

Ex. 5 AC/DP

5. OGC recommendation: **Ex. 5 AC/DP**

Please work with Kamila on a draft and send to me for review when it's ready. Thanks!

Best,

David

David Fotouhi

Principal Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Koch, Erin <Koch.Erin@epa.gov>
Sent: Thursday, June 18, 2020 5:26 PM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Subject: dicamba rehearing

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Ex. 5 AC/AWP/DP

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Let me know if you have questions,

Erin S. Koch
Pesticides and Toxic Substances Law Office
Office of General Counsel
US EPA
202-564-1718

Message

From: Knorr, Michele [knorr.michele@epa.gov]
Sent: 8/4/2020 3:59:31 PM
To: Garrison, Scott [Garrison.Scott@epa.gov]; Kenny, Daniel [Kenny.Dan@epa.gov]
CC: Rosenblatt, Daniel [Rosenblatt.Dan@epa.gov]; Meadows, Sarah [Meadows.Sarah@epa.gov]; Schmid, Emily [Schmid.Emily@epa.gov]; Hathaway, Margaret [Hathaway.Margaret@epa.gov]; Crawford, Lydia [Crawford.Lydia@epa.gov]
Subject: RE: Tavium Application

Thanks, Scott. I have power back and I think we should discuss this at the team meeting today. I basically agree with Scott. I'm still a little confused

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Scott – thoughts on the PRIA issue?

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Garrison, Scott <Garrison.Scott@epa.gov>
Sent: Tuesday, August 04, 2020 11:53 AM
To: Kenny, Daniel <Kenny.Dan@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>
Cc: Rosenblatt, Daniel <Rosenblatt.Dan@epa.gov>; Meadows, Sarah <Meadows.Sarah@epa.gov>; Schmid, Emily <Schmid.Emily@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>; Crawford, Lydia <Crawford.Lydia@epa.gov>
Subject: RE: Tavium Application

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Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Kenny, Daniel <Kenny.Dan@epa.gov>
Sent: Tuesday, August 04, 2020 11:00 AM
To: Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Cc: Rosenblatt, Daniel <Rosenblatt.Dan@epa.gov>; Meadows, Sarah <Meadows.Sarah@epa.gov>; Schmid, Emily <Schmid.Emily@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>; Crawford, Lydia <Crawford.Lydia@epa.gov>
Subject: Tavium Application

Ex. 5 Attorney Client (AC)

Thanks for your help,
Dan

Daniel Kenny, Chief
Herbicide Branch
Registration Division
Office of Pesticide Programs
U.S. Environmental Protection Agency

Message

From: Hathaway, Margaret [Hathaway.Margaret@epa.gov]
Sent: 7/1/2020 9:30:44 PM
To: Garrison, Scott [Garrison.Scott@epa.gov]; Knorr, Michele [knorr.michele@epa.gov]
CC: Kenny, Daniel [Kenny.Dan@epa.gov]; Schmid, Emily [Schmid.Emily@epa.gov]; Rosenblatt, Daniel [Rosenblatt.Dan@epa.gov]
Subject: RE: Dicamba Litigation Timeline

This is perfect! Thank you so much.

- Meg

From: Garrison, Scott <Garrison.Scott@epa.gov>
Sent: Wednesday, July 01, 2020 5:13 PM
To: Hathaway, Margaret <Hathaway.Margaret@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>
Cc: Kenny, Daniel <Kenny.Dan@epa.gov>; Schmid, Emily <Schmid.Emily@epa.gov>; Rosenblatt, Daniel <Rosenblatt.Dan@epa.gov>
Subject: RE: Dicamba Litigation Timeline

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Here is a list of the missing events; copies of the filings are attached.

On June 12, 2020 BASF Corporation and E.I. du Pont de Nemours and Company each filed motions to intervene.

Also on June 16, 2020, Monsanto filed a brief in response to Petitioners' motion to enforce the Court's order and for contempt. duPont file a reservation of rights to join in Monsanto's brief if its motion to intervene is granted. BASF filed a brief and a cross-motion to recall the mandate and allow rehearing on whether the Court has jurisdiction over the Engenia registration. The American Farm Bureau Federation and Croplife America each filed motions for leave to file amicus curiae briefs.

On June 17, 2020, Petitioner's filed their opposition to the BASF and du Pont motions to intervene.

On June 19, 2020, Petitioners' filed their opposition to the American Farm Bureau Federation and Croplife America each filed motions for leave to file amicus curiae briefs. The Court issued a series of orders; the most significant denied Petitioners' emergency motion to enforce the Court's vacatur and hold EPA in contempt. The Court also granted Petitioners' motion to file an oversized reply brief for their emergency motion, granted the BASF and du Pont motions to intervene, and granted the American Farm Bureau Federation and Croplife America's motions for leave to file amicus briefs.

On June 23, 2020, Petitioners' filed their opposition to BASF's cross-motion to recall the mandate and allow rehearing on jurisdiction over Engenia.

On June 24, 2020, Intervenors BASF and du Pont filed reply briefs in support of BASF's cross-motion to recall the mandate and allow rehearing on jurisdiction over Engenia.

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Hathaway, Margaret <Hathaway.Margaret@epa.gov>
Sent: Wednesday, July 01, 2020 11:35 AM
To: Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Cc: Kenny, Daniel <Kenny.Dan@epa.gov>; Schmid, Emily <Schmid.Emily@epa.gov>; Rosenblatt, Daniel <Rosenblatt.Dan@epa.gov>
Subject: Dicamba Litigation Timeline

Hello Michele and Scott:

Ed Messina has requested a timeline of recent dicamba litigation events for a meeting he has coming up on July 9th. We already have a list (copied below) covering June 3rd – June 16th, but does OGC have an expanded list that is current?

If not, could you please assist RD in fleshing out a summary of that also includes the more recent actions? Mike Goodis has been forwarding the various court documents to RD, but I'm unsure how to best summarize these legal actions, and may be missing some steps as well.

Thank you,
Meg

June 3rd through June 16th Dicamba Litigation Timeline

On June 3, 2020 in the case entitled *National Family Farm Coalition, et. al. versus EPA*, the United States Court of Appeals for the Ninth Circuit Court (based in San Francisco, California) ruled that EPA's approval of three over-the-top dicamba herbicides (XtendiMax, Engenia and FeXapan) for genetically modified crops such as soybeans be vacated (or ended) immediately.

On June 8, 2020, EPA issued a cancellation order providing farmers with needed clarity following the Ninth Circuit's decision. The order outlines limited and specific circumstances under which existing stocks of the three affected dicamba products can be used, through July 31, 2020.

On June 11, 2020, the NGO's who had originally filed the complaint in this case (National Family Farm Coalition, Center for Biological Diversity, and Center for Food Safety) filed an emergency motion with the Ninth Circuit asking that the court enforce their original vacating order and find EPA in contempt.

On June 16, 2020, the Department of Justice, on behalf of EPA, filed its response to the NGO's request, arguing that EPA had complied with the court's order in treating the products as unregistered. The cancellation order is a separate legal action, that consistent with the Court's order, and does not allow distribution and sale of these products, except in limited circumstances. The cancellation order also bans use of existing stocks after July 31, 2020, and requires that any use of existing stocks prior to July 31, 2020 follow previously-approved label conditions.

Margaret Hathaway (Meg)
Senior Regulatory Specialist
U.S. Environmental Protection Agency

OCSPP: Office of Pesticide Programs
Registration Division – Herbicide Branch
hathaway.margaret@epa.gov
(703) 305-5076

Message

From: Knorr, Michele [knorr.michele@epa.gov]
Sent: 7/1/2020 4:45:41 PM
To: Garrison, Scott [Garrison.Scott@epa.gov]
Subject: Re: Dicamba Litigation Timeline

Thank you! I'm in another hell today.

Michele Knorr
OGC
202-564-5631

On Jul 1, 2020, at 12:45 PM, Garrison, Scott <Garrison.Scott@epa.gov> wrote:

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I'll take care of this.

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Hathaway, Margaret <Hathaway.Margaret@epa.gov>
Sent: Wednesday, July 01, 2020 11:35 AM
To: Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Cc: Kenny, Daniel <Kenny.Dan@epa.gov>; Schmid, Emily <Schmid.Emily@epa.gov>; Rosenblatt, Daniel <Rosenblatt.Dan@epa.gov>
Subject: Dicamba Litigation Timeline

Hello Michele and Scott:

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Thank you,
Meg

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Margaret Hathaway (Meg)
Senior Regulatory Specialist
U.S. Environmental Protection Agency
OCSPP: Office of Pesticide Programs
Registration Division – Herbicide Branch
hathaway.margaret@epa.gov
(703) 305-5076

Message

From: Knorr, Michele [knorr.michele@epa.gov]
Sent: 6/15/2020 3:43:35 PM
To: Cole, Joseph E. [cole.josephe@epa.gov]; Garrison, Scott [Garrison.Scott@epa.gov]; Koch, Erin [Koch.Erin@epa.gov]
Subject: FW: Agri Pulse: EPA must respond by Tuesday to dicamba motion

See below. I have highlighted/underlined an unfortunate sentence in this article.

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Dennis, Allison <Dennis.Allison@epa.gov>
Sent: Monday, June 15, 2020 11:41 AM
To: Keigwin, Richard <Keigwin.Richard@epa.gov>; Messina, Edward <Messina.Edward@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Motilall, Christina <Motilall.Christina@epa.gov>; Siedschlag, Gregory <Siedschlag.Gregory@epa.gov>
Subject: FW: Agri Pulse: EPA must respond by Tuesday to dicamba motion

From: Labbe, Ken <Labbe.Ken@epa.gov>
Sent: Monday, June 15, 2020 11:35 AM
To: Bolen, Derrick <bolen.derrick@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; Dunton, Cheryl <Dunton.Cheryl@epa.gov>; Fischer, David <Fischer.David@epa.gov>; Giddings, Daniel <giddings.daniel@epa.gov>; Grable, Melissa <Grable.Melissa@epa.gov>; Hanley, Mary <Hanley.Mary@epa.gov>; Labbe, Ken <Labbe.Ken@epa.gov>; Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Sullivan, Melissa <sullivan.melissa@epa.gov>; Dekleva, Lynn <dekleva.lynn@epa.gov>; Kadeli, Lek <Kadeli.Lek@epa.gov>; Lieberman, Paige <Lieberman.Paige@epa.gov>
Cc: Tyler, Tom <Tyler.Tom@epa.gov>
Subject: Agri Pulse: EPA must respond by Tuesday to dicamba motion

EPA must respond by Tuesday to dicamba motion

<https://www.agri-pulse.com/articles/13887-epa-must-respond-to-dicamba-motion-tuesday>

By Steve Davies
June 12, 2020



Acting EPA administrator Andrew Wheeler addresses employees at the agency July 11. Photo: EPA

The Environmental Protection Agency must respond by Tuesday to an emergency motion filed by four groups seeking to enforce the Ninth Circuit court's June 3 order vacating over-the-top dicamba registrations.

In a brief order, the court directed EPA to file a response by 5 p.m. Pacific Time June 16. The petitioner groups, including the Center for Food Safety and Center for Biological Diversity, must file their reply two days later — Thursday, June 18, at the same time.

Also today, Corteva Agriscience (makers of FeXapan) and BASF (Engenia) filed motions to intervene in the case. They have not previously been involved.

Corteva said it is "seeking to intervene to preserve our rights and to support the rights of customers to use the impacted dicamba weed control technologies. We believe dicamba is an effective weed management tool for farmers when used according to the label."

BASF said it decided to try to take part in the case "after careful consideration of the sudden and severe financial impact vacating the registration has had on farmers during this critical application time, when farmers now have less than a month to protect millions of acres under threat from resistant weeds."

Xtendimax maker Bayer intervened last year and argued in a brief last month in support of EPA that even if the court vacated the registrations, end-users should be allowed to use existing stocks.

EPA's June 8 cancellation order allows commercial applicators and growers to use what they have on hand, though EPA Administrator Andrew Wheeler recently told state and national farm bureau representatives that retailers who have prepaid product also can distribute it.

In a statement today, Agriculture Secretary Sonny Perdue accused the petitioners — and the Center for Biological Diversity by name — of seeking “to cripple American farmers and further limit their ability to feed, fuel, and clothe this nation and the world.”

“The Ninth Circuit should not allow plaintiffs’ hostility against the American farmer to cloud the fact that the EPA’s actions follow both legal precedent and common sense,” Perdue said.

That drew a rebuke from the co-counsel in the case, CBD’s Stephanie Parent. “The over-the-top use of these dicamba products was not available a few years ago,” she said. “The sky-is-falling approach is unsupported and alarmist. They are so accustomed to getting their way, this kind of punching back is typical bully behavior.”

Kenneth T. Labbe
U.S. Environmental Protection Agency
Office of Public Affairs
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460
Office: 202-564-1486
Cell: 202-740-3770

Message

From: Koch, Erin [Koch.Erin@epa.gov]
Sent: 10/26/2020 6:21:21 PM
To: Garrison, Scott [Garrison.Scott@epa.gov]; Knorr, Michele [knorr.michele@epa.gov]
Subject: RE: FINAL Dicamba Press Release

I tried some edits, do these help?

From: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>
Sent: Monday, October 26, 2020 1:35 PM
To: Cole, Joseph E. <cole.josephe@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>
Cc: Drinkard, Andrea <Drinkard.Andrea@epa.gov>
Subject: RE: FINAL Dicamba Press Release

Adding the rest of the PTSLO dicamba team, thanks.

From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Monday, October 26, 2020 1:16 PM
To: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>
Cc: Drinkard, Andrea <Drinkard.Andrea@epa.gov>
Subject: FW: FINAL Dicamba Press Release

Please review and provide edits to Andrea ASAP. Share with the team as appropriate. Thank you.

David Fotouhi

Acting General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Drinkard, Andrea <Drinkard.Andrea@epa.gov>
Sent: Monday, October 26, 2020 1:09 PM
To: Block, Molly <block.molly@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Rodriguez, Alejandra (Allie) <rodriguez.alejandra@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Johnson, Taylor <Johnson.Taylor.C@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; Jenkins, Brandi <Jenkins.Brandi@epa.gov>; Striegel, Megan <Striegel.Megan@epa.gov>
Subject: FINAL Dicamba Press Release

Hi all—

Thanks all for your input into the Dicamba press release. These version includes the approved quote and a few last minute edits. We should be pens down on this, but if there are any last minute tweaks please let me know ASAP as we have multiple documents that rely on the language included here.

Allison, please let me know if there is a direct link to the dicamba materials that we should be adding to the release.

Allie, if you haven't already, could you please upload this version into Campaign Monitor?

Thanks!

EPA Announces 2020 Dicamba Registration Decision

Brooklet, Ga. — At the Cromley Farm, U.S. Environmental Protection Agency (EPA) Administrator Andrew Wheeler announced that EPA is approving new five-year registrations for two dicamba products and extending the registration of an additional dicamba product. All three registrations include new mitigation efforts to ensure these products can be used effectively while protecting the environment, including non-target plants, animals, and other crops not tolerant to dicamba.

“With today’s decision, farmers now have the certainty they need to make plans for their 2021 growing season,” **said EPA Administrator Andrew Wheeler.** “After reviewing substantial amounts of new information, conducting scientific assessments based on the best available science, and carefully considering input from stakeholders we have reached a resolution that is good for our farmers and our environment.”

Through today’s action, EPA approved new registrations for two “over the top” (OTT) dicamba products—XtendiMax with VaporGrip Technology and Engenia Herbicide—and extended the registration for an additional OTT dicamba product, Tavium plus VaporGrip Technology. These registrations are only for use on dicamba-tolerant (DT) cotton and soybeans and will expire in 2025, providing certainty to American agriculture for the upcoming growing season and beyond.

To manage off-site movement of dicamba, EPA’s 2020 registration features important control measures, including:

- Requiring an approved pH-buffering agent (also called a Volatility Reduction Agent or VRA) be tank mixed with over-the-top dicamba products prior to all applications to control volatility.
- A downwind buffer of 240 feet will be required and 310 feet in counties where endangered species are located.
- Prohibiting OTT application of dicamba on soybeans after June 30 and cotton after July 30.
- Simplifying the label and use directions so that growers can more easily determine when and how to properly apply dicamba.

Ex. 5 Deliberative Process (DP)

The 2020 registration labels also provide new flexibilities for growers and states. For example, there are opportunities for growers to reduce the downwind spray buffer for soybeans through use of certain approved hooded sprayers as an alternative control method. EPA also recognizes and supports the important authority FIFRA section 24 gives the states for issuing locally appropriate regulations for pesticide use. If a state wishes to expand the federal OTT uses of dicamba to better meet special local needs, the agency will work with them to support their goals.

This action was informed by input from state regulators, grower groups, academic researchers, pesticide manufacturers, and others. EPA reviewed substantial amounts of new information and conducted scientific assessments based on the best available science, including making an Effect Determinations under the Endangered Species Act (ESA). With this information and input, EPA has concluded that these registration actions meet Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) registration standards. EPA believes that these new analyses address the concerns expressed in regard to EPA’s 2018 dicamba registrations in the June 2020 U.S. Court of Appeals for the Ninth Circuit. After completing its Effects Determinations for dicamba uses on DT cotton and soybeans, Further, EPA concluded that with the control measures now required on labels, these actions either do not affect or are not likely to adversely affect endangered or threatened species.

Ex. 5 AC/DP

To view the final registration of the dicamba products, visit docket EPA-HQ-OPP-2020-0492 at www.regulations.gov.

Background

The United States is the world's leading soybean producer and second-leading soybean exporter and also serves as the world's third-largest cotton producer and the leading cotton exporter. Today, there are limited cost-effective options to control herbicide-resistant weeds affecting these commodities. In 2018, approximately 41 percent of U.S. soybean acreage was planted with dicamba-tolerant (DT) seed and almost 70 percent of U.S. cotton acreage was planted with DT seed in 2019. Relative to alternative herbicide programs, postemergence dicamba may reduce weed control costs for some growers, possibly by as much as \$10 per acre, or over five percent of net operating revenue, not accounting for all measures growers will have to take to control off-field movement of dicamba.

Following reports of damage resulting from the off-site movement of dicamba, EPA amended the dicamba registration labels in 2017 and in 2018. In June 2020, the U.S. Court of Appeals for the Ninth Circuit vacated the registrations for three dicamba products: XtendiMax with VaporGrip Technology, Engenia Herbicide, and DuPont FeXapan Herbicide. As a result of the Court's decision, EPA issued cancellation orders outlining limited circumstances under which existing stocks of the three affected products could be distributed and used until July 31, 2020.

Andrea Drinkard
Senior Advisor
EPA Office of Public Affairs
Desk: 202.564.1601
Cell: 202.236.7765

Message

From: Knorr, Michele [knorr.michele@epa.gov]
Sent: 10/26/2020 6:01:23 PM
To: Koch, Erin [Koch.Erin@epa.gov]
CC: Garrison, Scott [Garrison.Scott@epa.gov]
Subject: Re: FINAL Dicamba Press Release

Some of the language is not quite right but we don't have any time right now. We are working with Marietta on decision. **Ex. 5 AC/DP** But, who knows whether is time to address this in an hour or so.

Michele Knorr
OGC
202-564-5631

On Oct 26, 2020, at 1:43 PM, Koch, Erin <Koch.Erin@epa.gov> wrote:

I looked this over and think it is fine, but for one question based on some earlier traffic I saw. Are we saying VRA means and agent or an adjuvant? This press release uses agent.

From: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>
Sent: Monday, October 26, 2020 1:35 PM
To: Cole, Joseph E. <cole.josephe@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>
Cc: Drinkard, Andrea <Drinkard.Andrea@epa.gov>
Subject: RE: FINAL Dicamba Press Release

Adding the rest of the PTSLO dicamba team, thanks.

From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Monday, October 26, 2020 1:16 PM
To: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>
Cc: Drinkard, Andrea <Drinkard.Andrea@epa.gov>
Subject: FW: FINAL Dicamba Press Release

Please review and provide edits to Andrea ASAP. Share with the team as appropriate. Thank you.

David Fotouhi

Acting General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Drinkard, Andrea <Drinkard.Andrea@epa.gov>
Sent: Monday, October 26, 2020 1:09 PM
To: Block, Molly <block.molly@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Rodriguez, Alejandra (Allie) <rodriguez.alejandra@epa.gov>; Meadows,

Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Johnson, Taylor <Johnson.Taylor.C@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; Jenkins, Brandi <Jenkins.Brandi@epa.gov>; Striegel, Megan <Striegel.Megan@epa.gov>

Subject: FINAL Dicamba Press Release

Hi all—

Thanks all for your input into the Dicamba press release. These version includes the approved quote and a few last minute edits. We should be pens down on this, but if there are any last minute tweaks please let me know ASAP as we have multiple documents that rely on the language included here.

Allison, please let me know if there is a direct link to the dicamba materials that we should be adding to the release.

Allie, if you haven't already, could you please upload this version into Campaign Monitor?

Thanks!

EPA Announces 2020 Dicamba Registration Decision

Brooklet, Ga. — At the Cromley Farm, U.S. Environmental Protection Agency (EPA) Administrator Andrew Wheeler announced that EPA is approving new five-year registrations for two dicamba products and extending the registration of an additional dicamba product. All three registrations include new mitigation efforts to ensure these products can be used effectively while protecting the environment, including non-target plants, animals, and other crops not tolerant to dicamba.

“With today’s decision, farmers now have the certainty they need to make plans for their 2021 growing season,” **said EPA Administrator Andrew Wheeler.** “After reviewing substantial amounts of new information, conducting scientific assessments based on the best available science, and carefully considering input from stakeholders we have reached a resolution that is good for our farmers and our environment.”

Through today’s action, EPA approved new registrations for two “over the top” (OTT) dicamba products—XtendiMax with VaporGrip Technology and Engenia Herbicide—and extended the registration for an additional OTT dicamba product, Tavium plus VaporGrip Technology. These registrations are only for use on dicamba-tolerant (DT) cotton and soybeans and will expire in 2025, providing certainty to American agriculture for the upcoming growing season and beyond.

To manage off-site movement of dicamba, EPA’s 2020 registration features important control measures, including:

- Requiring an approved pH-buffering agent (also called a Volatility Reduction Agent or VRA) be tank mixed with over-the-top dicamba products prior to all applications to control volatility.
- A downwind buffer of 240 feet will be required and 310 feet in counties where endangered species.
- Prohibiting OTT application of dicamba on soybeans after June 30 and cotton after July 30.

- Simplifying the label and use directions so that growers can more easily determine when and how to properly apply dicamba.

Ex. 5 Deliberative Process (DP)

The 2020 registration labels also provide new flexibilities for growers and states. For example, there are opportunities for growers to reduce the downwind spray buffer for soybeans through use of certain approved hooded sprayers as an alternative control method. EPA also recognizes and supports the important authority FIFRA section 24 gives the states for issuing locally appropriate regulations for pesticide use. If a state wishes to expand the federal OTT uses of dicamba to better meet special local needs, the agency will work with them to support their goals.

This action was informed by input from state regulators, grower groups, academic researchers, pesticide manufacturers, and others. EPA reviewed substantial amounts of new information and conducted scientific assessments based on the best available science, including making an Effect Determination under the Endangered Species Act (ESA). With this information and input, EPA has concluded that these registration actions meet Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) registration standards. EPA believes that these new analyses address the concerns expressed in regard to EPA's 2018 dicamba registrations in the June 2020 U.S. Court of Appeals for the Ninth Circuit. After completing its Effects Determinations for dicamba uses on DT cotton and soybeans, EPA concluded that with the control measures now required on labels, these actions do not affect endangered or threatened species.

Ex. 5 AC/DP

To view the final registration of the dicamba products, visit docket EPA-HQ-OPP-2020-0492 at www.regulations.gov.

Background

The United States is the world's leading soybean producer and second-leading soybean exporter and also serves as the world's third-largest cotton producer and the leading cotton exporter. Today, there are limited cost-effective options to control herbicide-resistant weeds affecting these commodities. In 2018, approximately 41 percent of U.S. soybean acreage was planted with dicamba-tolerant (DT) seed and almost 70 percent of U.S. cotton acreage was planted with DT seed in 2019. Relative to alternative herbicide programs, postemergence dicamba may reduce weed control costs for some growers, possibly by as much as \$10 per acre, or over five percent of net operating revenue, not accounting for all measures growers will have to take to control off-field movement of dicamba.

Following reports of damage resulting from the off-site movement of dicamba, EPA amended the dicamba registration labels in 2017 and in 2018. In June 2020, the U.S. Court of Appeals for the Ninth Circuit vacated the registrations for three dicamba products: XtendiMax with VaporGrip Technology, Engenia Herbicide, and DuPont FeXapan Herbicide. As a result of the Court's decision, EPA issued cancellation orders outlining limited circumstances under which existing stocks of the three affected products could be distributed and used until July 31, 2020.

Andrea Drinkard
Senior Advisor

EPA Office of Public Affairs

Desk: 202.564.1601

Cell: 202.236.7765

Message

From: Knorr, Michele [knorr.michele@epa.gov]
Sent: 5/12/2020 10:29:31 PM
To: O'Donnell, Jessica (ENRD) [Jessica.O'Donnell@usdoj.gov]
CC: Garrison, Scott [Garrison.Scott@epa.gov]; Grosko, Brett (ENRD) [Brett.Grosko@usdoj.gov]; Buckley, Sarah (ENRD) [Sarah.Buckley@usdoj.gov]
Subject: Re: Our edits/comments on the dicamba brief

Our front office approved it as well. And I have not received any further comments from anyone else. Thanks so much for all the work on this. We are all very pleased with it.

Michele Knorr
OGC
202-564-5631

On May 12, 2020, at 4:18 PM, O'Donnell, Jessica (ENRD)
<Jessica.O'Donnell@usdoj.gov> wrote:

EPA –

The supplemental brief has been approved by our front office and our paralegals are starting to prepare the table of authorities for the brief. If you have any further corrections, please let me know by 10:30 tomorrow morning.

Ex. 5 Attorney Client (AC)

Thanks to everyone for all your efforts to get this done on a short timetable.

Jessica

Jessica O'Donnell
Assistant Section Chief
Environmental Defense Section
202.305.0851

From: Garrison, Scott <Garrison.Scott@epa.gov>
Sent: Tuesday, May 12, 2020 11:17 AM
To: Knorr, Michele <knorr.michele@epa.gov>; O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>
Cc: Grosko, Brett (ENRD) <BGrosko@ENRD.USDOJ.GOV>; Buckley, Sarah (ENRD) <SBuckley@ENRD.USDOJ.GOV>
Subject: RE: Our edits/comments on the dicamba brief

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I can't find the 2016 bridging document in the Index or on EPA's website. I did find a reference to it on ER 393.

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Tuesday, May 12, 2020 10:43 AM
To: O'Donnell, Jessica (ENRD) <Jessica.O'Donnell@usdoj.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Cc: Grosko, Brett (ENRD) <Brett.Grosko@usdoj.gov>; Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Subject: RE: Our edits/comments on the dicamba brief

Ex. 5 Attorney Client (AC)

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: O'Donnell, Jessica (ENRD) <Jessica.O'Donnell@usdoj.gov>
Sent: Tuesday, May 12, 2020 10:31 AM
To: Garrison, Scott <Garrison.Scott@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>
Cc: Grosko, Brett (ENRD) <Brett.Grosko@usdoj.gov>; Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Subject: RE: Our edits/comments on the dicamba brief

Ex. 5 Attorney Client (AC)

On a related note, is there a website or docket we can tie to the document? If not, we may need a short declaration. (Apologies if you already answered the question and I didn't see it.)

Ex. 5 Attorney Client (AC)

Jessica O'Donnell
Assistant Section Chief
Environmental Defense Section
202.305.0851

From: Garrison, Scott <Garrison.Scott@epa.gov>
Sent: Tuesday, May 12, 2020 9:42 AM
To: Knorr, Michele <knorr.michele@epa.gov>
Cc: O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>; Grosko, Brett (ENRD) <BGrosko@ENRD.USDOJ.GOV>; Buckley, Sarah (ENRD) <SBuckley@ENRD.USDOJ.GOV>
Subject: RE: Our edits/comments on the dicamba brief

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It is a cite to the 2016 memo:

USEPA, 2016g. Dicamba BAPMA salt – Bridging Memorandum for Dicamba BAPMA Salt (Engenia) to Dicamba Acid and Dicamba DGA Salt. D402518. Environmental Fate and Effects Division, Office of Pesticide Programs, Office of Chemical Safety and Pollution Prevention. Washington, D.C. December 2016.

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Tuesday, May 12, 2020 9:37 AM
To: Garrison, Scott <Garrison.Scott@epa.gov>
Cc: O'Donnell, Jessica (ENRD) <Jessica.O'Donnell@usdoj.gov>; Grosko, Brett (ENRD) <Brett.Grosko@usdoj.gov>; Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Subject: Re: Our edits/comments on the dicamba brief

Scott -I think we want the 2016 bridging memo. Is the one you are referring the 2018 memo? Just want to make sure we provide the right one for the argument. Thanks

Michele Knorr
OGC
202-564-5631

On May 12, 2020, at 9:35 AM, Garrison, Scott
<Garrison.Scott@epa.gov> wrote:

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Michele's right, there's no explicit petition authority provision, sec. 16(a) is as close as it gets. You could also cite sec. 6(b) and (d) for the cancellation proceeding.

The bridging memo is listed as a reference in the 11/1/2018 "Summary of New Information and Analysis of Dicamba Use on Dicamba-Tolerant (DT) Cotton and Soybean Including Updated Effects Determinations for Federally Listed Threatened and Endangered Species", which is ER 331. The specific reference to the bridging memo is at ER 393.

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Tuesday, May 12, 2020 8:24 AM
To: O'Donnell, Jessica (ENRD) <Jessica.O'Donnell@usdoj.gov>
Cc: Grosko, Brett (ENRD) <Brett.Grosko@usdoj.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Subject: Re: Our edits/comments on the dicamba brief

Brett has the memo and it has had a cbi check and is cleared for publication. Brett - can you forward the memo to Jessica? I'm in meetings most of the morning and this is my 2 minute break. As for the petitioning, they can petition under the APA and then section 16(a) references petitions to cancel. Let us know if you need more. We will take a quick look at the brief later. Thanks again for all the work on this!!!

Michele Knorr

OGC
202-564-5631

On May 12, 2020, at 6:35 AM, O'Donnell, Jessica (ENRD) <Jessica.O'Donnell@usdoj.gov> wrote:

<image002.gif>
Michele –

Thank you for getting me your final comments early! The attached is the draft I sent my front office yesterday afternoon. I was not able to incorporate all of the new text due to the 10-page limit, but I think this draft captures the essential substance of most of the edits in one way or another. E.g., I couldn't add the dates or links for the Fexapan and Engenia registrations, but the labels and orders are in the record and the draft provides the record citations to those documents. I elected not to eliminate the second argument heading. From an advocacy standpoint, if we can get the court with us on the first point—that the petition refers to Xtendimax—then we will have an easier time convincing it that it does not extend to Fexapan and Engenia.

I still need a few cites. Can you provide me with the following:
The proposed Ex. A – the bridging memo. Is this document cited on EPA's website or regulations.gov? Also please confirm there are not confidentiality issues with attaching this document.
On p. 10 – a statutory or regulatory cite for the sentence explaining that parties can seek cancellation or suspension of the pesticides.

Let me know if you have any other questions or want to discuss anything.

Thanks,
Jessica
Jessica O'Donnell
Assistant Section Chief
Environmental Defense Section
202.305.0851

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Monday, May 11, 2020 12:31 PM
To: O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>; Grosko, Brett (ENRD) <BGrosko@ENRD.USDOJ.GOV>
Cc: Garrison, Scott <Garrison.Scott@epa.gov>
Subject: Our edits/comments on the dicamba brief

We are early again with our comments – yay! This includes all OGC comments. Let us know if we should discuss any of these. Also, can you update us on whether there will be a call with Bayer counsel about what they intend to focus on in their brief? Thanks again for all the hard work on this.

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

<ENV_DEFENSE-#918333-v2-
Dicamba_II_Revised_Draft_Supplemental_Brief_clean_version.DOCX>

Message

From: Buckley, Sarah (ENRD) [Sarah.Buckley@usdoj.gov]
Sent: 5/21/2020 3:53:23 PM
To: Garrison, Scott [Garrison.Scott@epa.gov]; Knorr, Michele [knorr.michele@epa.gov]; O'Donnell, Jessica (ENRD) [Jessica.O'Donnell@usdoj.gov]
CC: Grosko, Brett (ENRD) [Brett.Grosko@usdoj.gov]
Subject: RE: Dicamba - draft response

Thanks for catching that. I will file later today.

From: Garrison, Scott <Garrison.Scott@epa.gov>
Sent: Wednesday, May 20, 2020 6:30 PM
To: Knorr, Michele <knorr.michele@epa.gov>; O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>; Buckley, Sarah (ENRD) <SBuckley@ENRD.USDOJ.GOV>
Cc: Grosko, Brett (ENRD) <BGrosko@ENRD.USDOJ.GOV>
Subject: RE: Dicamba - draft response

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Looks good, but a couple things:

A grammar issue in footnote 2: "Petitioners never ~~seeking~~ sought to stay the registration, then unjustifiably sought to extend the relief beyond Xtendimax to pesticides never named in their petition, and now ask the Court..."

Ex. 5 Attorney Client (AC)

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Wednesday, May 20, 2020 5:04 PM
To: O'Donnell, Jessica (ENRD) <Jessica.O'Donnell@usdoj.gov>; Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Cc: Grosko, Brett (ENRD) <Brett.Grosko@usdoj.gov>
Subject: RE: Dicamba - draft response

I am good with this as well – nice job!

Scott – do you have any concerns?

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: O'Donnell, Jessica (ENRD) <Jessica.O'Donnell@usdoj.gov>
Sent: Wednesday, May 20, 2020 5:02 PM
To: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>; Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Cc: Grosko, Brett (ENRD) <Brett.Grosko@usdoj.gov>
Subject: RE: Dicamba - draft response

This revised draft is fine with me. Thanks!

Jessica O'Donnell
Assistant Section Chief
Environmental Defense Section
202.305.0851

From: Buckley, Sarah (ENRD) <SBuckley@ENRD.USDOJ.GOV>
Sent: Wednesday, May 20, 2020 3:37 PM
To: Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Cc: Grosko, Brett (ENRD) <BGrosko@ENRD.USDOJ.GOV>; O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>
Subject: RE: Dicamba - draft response

Thanks, Michele. For the most part I have incorporated or adapted your comments. Please review the attached.

Our FO is not going to review so if I get the thumbs up from Jessica I will aim to file tomorrow. (Along with a brief motion for leave, which I will work on now...)

Thanks,
Sarah

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Wednesday, May 20, 2020 12:05 PM
To: Buckley, Sarah (ENRD) <SBuckley@ENRD.USDOJ.GOV>; Garrison, Scott <Garrison.Scott@epa.gov>
Cc: Grosko, Brett (ENRD) <BGrosko@ENRD.USDOJ.GOV>; O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>
Subject: RE: Dicamba - draft response

Here are our edits and comments. Let us know if you want to discuss. Thanks

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Sent: Tuesday, May 19, 2020 2:13 PM
To: Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>

Cc: Grosko, Brett (ENRD) <Brett.Grosko@usdoj.gov>; O'Donnell, Jessica (ENRD) <Jessica.O'Donnell@usdoj.gov>

Subject: Dicamba - draft response

Hi Michele and Scott:

I attach a draft response. Take a look and let me know when you can get me comments back. I'm happy turn around another draft to send to your management tomorrow, or to wait for one draft with comments from you and the higher-ups. In either case, the sooner the better!

Thanks,
Sarah

Sarah A. Buckley

Trial Attorney

U.S. Department of Justice

Environment & Natural Resources Division

Environmental Defense Section

4 Constitution Square

150 M Street, NE

Room 4.1126

Washington, DC 20002

sarah.buckley@usdoj.gov

Ph: (202) 616-7554

Message

From: Knorr, Michele [knorr.michele@epa.gov]
Sent: 6/7/2020 1:15:10 AM
To: Cole, Joseph E. [cole.josephe@epa.gov]; Koch, Erin [Koch.Erin@epa.gov]; Garrison, Scott [Garrison.Scott@epa.gov]
Subject: RE: Update on dicamba - possible response to David's email
Attachments: Carrie Meadows declaration 9 PM.docx; Keigwin declaration motion for recall 9 PM.docx

Importance: High

Here's the best I can do tonight.

Ex. 5 Attorney Client (AC)

David's email

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Cole, Joseph E. <cole.josephe@epa.gov>
Sent: Saturday, June 06, 2020 7:00 PM
To: Koch, Erin <Koch.Erin@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Subject: FW: Update on dicamba

See David's thoughts below. I told him that we do want to discuss and that we'd provide draft declarations and a draft order (and motion if available) in whatever shape they're in, prior to the meeting. Let's try to ensure we can get he and Kamila drafts in a reasonable time to review before the meeting at 1:00.

Joe

From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Saturday, June 6, 2020 6:29 PM
To: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>
Subject: RE: Update on dicamba

I'm happy to talk tomorrow if that would be helpful—I'm generally available.

Ex. 5 Attorney Client (AC)

David Fotouhi

Principal Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>
Sent: Saturday, June 6, 2020 4:24 PM
To: Cole, Joseph E. <cole.josephe@epa.gov>
Cc: Fotouhi, David <Fotouhi.David@epa.gov>
Subject: RE: Update on dicamba

Hi Joe,

Thanks for this update. I'm adding David – perhaps we can schedule a group call sometime today or tomorrow to discuss? David, what would work for you?

Thanks,
Kamila

From: Cole, Joseph E. <cole.josephe@epa.gov>
Sent: Saturday, June 6, 2020 4:09 PM
To: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>
Subject: Update on dicamba

Kamila,

Please see email below from the PTSLO team. As a result of additional discussion with DoJ last night and today, we wanted to share this information for your consideration. Staff is continuing to work on the path as indicated from David and are making good progress on declarations and a draft cancellation order, but I think it would be beneficial to have a discussion with you and David on some issues relating to this before Monday.

I wanted to send this to you first for your consideration; I'll follow up with a call shortly. Thanks.

Joe

Joseph E. Cole
Associate General Counsel
Pesticides and Toxic Substances Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-5583

From: Koch, Erin <Koch.Erin@epa.gov>
Sent: Saturday, June 6, 2020 3:27 PM
To: Knorr, Michele <knorr.michele@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Subject: RE: as discussed - draft update email for Joe to send to FO

Revised below

Attorney Work Product

The following provides the latest on where we are on the motion to recall. We have spent a while speaking with DOJ to understand how to best draft this motion. In doing so, we have encountered a few issues that we would like to discuss with you. These are presented below.

Ex. 5 Attorney Client (AC)

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

Message

From: Knorr, Michele [knorr.michele@epa.gov]
Sent: 6/8/2020 11:41:30 PM
To: Jessica O [jessica.o'donnell@usdoj.gov]; Sarah Buckley [Sarah.Buckley@usdoj.gov]; Brett Grosko [Brett.Grosko@usdoj.gov]
CC: Garrison, Scott [Garrison.Scott@epa.gov]; Koch, Erin [Koch.Erin@epa.gov]
Subject: Fwd: EPA Offers Clarity to Farmers in Light of Recent Court Vacatur of Dicamba Registrations

FYI order signed. Press out. Thanks for everything!

Michele Knorr
OGC
202-564-5631

Begin forwarded message:

FYI

Begin forwarded message:

From: EPA Press Office <press@epa.gov>
Date: June 8, 2020 at 7:26:49 PM EDT
To: "Dunn, Alexandra" <dunn.alexandra@epa.gov>
Subject: EPA Offers Clarity to Farmers in Light of Recent Court Vacatur of Dicamba Registrations
Reply-To: press@epa.gov

EPA Offers Clarity to Farmers in Light of Recent Court Vacatur of Dicamba Registrations

WASHINGTON (June 8, 2020) — Today, the U.S. Environmental Protection Agency (EPA) issued a key order providing farmers with needed clarity following the Ninth Circuit Court of Appeals' June 3, 2020 vacatur of three dicamba registrations. Today's [cancellation order](#) outlines limited and specific circumstances under which existing stocks of the three affected dicamba products can be used for a limited period of time. EPA's order will advance protection of public health and the environment by ensuring use of existing stocks follows important application procedures.

"At the height of the growing season, the Court's decision has threatened the livelihood of our nation's farmers and the global food supply," said **EPA Administrator Andrew Wheeler**. "Today's cancellation and existing stocks order is consistent with EPA's

standard practice following registration invalidation, and is designed to advance compliance, ensure regulatory certainty, and to prevent the misuse of existing stocks.”

EPA’s order will mitigate some of the devastating economic consequences of the Court’s decision for growers, and particularly rural communities, at a time they are experiencing great stress due to the COVID-19 public health emergency.

Details of the Order

EPA’s order addresses sale, distribution, and use of existing stocks of the three affected dicamba products - XtendiMax with vapor grip technology, Engenia, and FeXapan.

- Distribution or sale by any person is generally prohibited except for ensuring proper disposal or return to the registrant.
- Growers and commercial applicators may use existing stocks that were in their possession on June 3, 2020, the effective date of the Court decision. Such use must be consistent with the product’s previously-approved label, and may not continue after July 31, 2020.

Background

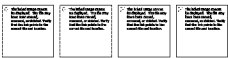
On June 3, 2020, the Ninth Circuit Court of Appeals issued an order vacating EPA’s pesticide registrations containing the active ingredient dicamba: Xtendimax with Vaporgrip Technology (EPA Reg. No. 524-617); Engenia - (EPA Reg. No. 7969-345); and FeXapan - (EPA Reg. No. 352-913).

Dicamba is a valuable pest control tool that farmers nationwide planned to use during the 2020 growing season. Since the Court issued its opinion, the agency has been overwhelmed with letters and calls from farmers citing the devastation of this decision on the millions of acres of crops, millions of dollars already invested by farmers, and threat to America’s food supply.



<!--[if !vml]-->

<!--[endif]-->





U.S. Environmental Protection Agency
1200 Pennsylvania Avenue Northwest
Washington, D.C. 20004

[Unsubscribe](#)

Message

From: Cole, Joseph E. [cole.josephe@epa.gov]
Sent: 6/4/2020 3:00:27 PM
To: Koch, Erin [Koch.Erin@epa.gov]; Knorr, Michele [knorr.michele@epa.gov]; Garrison, Scott [Garrison.Scott@epa.gov]
Subject: FW: Dicamba inquiry

FYI

From: Goerke, Ariadne <Goerke.Ariadne@epa.gov>
Sent: Thursday, June 4, 2020 10:43 AM
To: Block, Molly <block.molly@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>; Keigwin, Richard <Keigwin.Richard@epa.gov>; Walker, Mary <walker.mary@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>
Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Woods, Andrea <Woods.Andrea@epa.gov>
Subject: RE: Dicamba inquiry

I also saw an article this morning that inaccurately reported that the Court's decision means that growers cannot plant DT soybean seed they have already purchased this growing season. Public statements issued on the ruling from EPA should clarify that the order applies to the pesticide registration, not use of the seed.

Ariadne Goerke
Acting Associate Deputy General Counsel
U.S. Environmental Protection Agency
202-564-5471 (office)
202-505-0535 (cell)

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Note: here are some of the questions we're getting from press:

- What does the court's decision mean for the legality of planting Xtend products—is there any effect?
- Is Tavium at all effected by this decision? (as it was not specifically listed)
- What does this mean for future registration of dicamba products for over-the-top use?
- For farmers or retailers with XtendiMax, Engenia or FeXapan in their inventory what are their options? What would ramifications of application when the registration is vacated be?
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Subject: RE: Dicamba inquiry

We also set up a call at 11-1130 to touch base.

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Assistant Administrator
Office of Chemical Safety and Pollution Prevention
US Environmental Protection Agency
Washington, DC

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Subject: RE: Dicamba inquiry

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Kamilla, Ariadne, Joe- I will reach out to you three through a separate thread.

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Subject: RE: Dicamba inquiry

Carrie, can you work on a stakeholder call with Derrick?
I put 230-3 and 3-330 on hold for such calls.

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Subject: RE: Dicamba inquiry

Yes. We are starting to get a lot of questions about what this means for growers. I agree that some stakeholders call would be very helpful.

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Sent: Thursday, June 04, 2020 9:30 AM
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Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Woods, Andrea <Woods.Andrea@epa.gov>

Subject: RE: Dicamba inquiry

People will want to know (as will state ag commissioners) whether they can apply today. Like is it immediately illegal to apply dicamba.

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Office of Chemical Safety and Pollution Prevention
US Environmental Protection Agency
Washington, DC

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Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Woods, Andrea <Woods.Andrea@epa.gov>

Subject: RE: Dicamba inquiry

In the meantime, this is what we have been using with media per OCSPP and OGC:

EPA is currently reviewing the court decision and will move promptly to address the Court's directive. — EPA Spokesperson

From: Dunn, Alexandra <dunn.alexandra@epa.gov>

Sent: Thursday, June 4, 2020 9:19 AM

To: Walker, Mary <walker.mary@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>; Block, Molly <block.molly@epa.gov>

Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>

Subject: RE: Dicamba inquiry

Mary,

We are on this this morning. We are assessing how the decision will roll out. We will have a statement asap.

Alexandra Dapolito Dunn, Esq.
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
US Environmental Protection Agency
Washington, DC

From: Walker, Mary <walker.mary@epa.gov>

Sent: Thursday, June 4, 2020 9:15 AM

To: Dunn, Alexandra <dunn.alexandra@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>

Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>

Subject: Dicamba inquiry

Good morning,

I know you are all already contemplating this but just got a call from one of our Ag Commissioners – Gary Black from GA:

- 1) communicating deep concern given that farmers have already made growing decisions and are in the middle of growing season and concerned that Bayer and BASF are already planning to pull back on supplies to retailers and
- 2) asking if we had a statement on our plans here.

I told him I'd get back with any statement we may have – would like at least to let him know where we are and what farmers can expect if that is possible. There is no doubt that he will be speaking publicly today on this. I think he'd like to say that EPA is standing with farmers...

Thanks

Mary

Mary Salmon Walker | Regional Administrator
US Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, GA 30303
Tel: (404) 562-8357

Message

From: Cole, Joseph E. [cole.josephe@epa.gov]
Sent: 6/4/2020 2:38:32 PM
To: Koch, Erin [Koch.Erin@epa.gov]; Knorr, Michele [knorr.michele@epa.gov]; Garrison, Scott [Garrison.Scott@epa.gov]
Subject: FW: Dicamba inquiry

FYI – likely discussion points in meeting with Alex at 11:00. See below.

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Sent: Thursday, June 4, 2020 9:21 AM

To: Dunn, Alexandra <dunn.alexandra@epa.gov>; Walker, Mary <walker.mary@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>

Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Woods, Andrea <Woods.Andrea@epa.gov>

Subject: RE: Dicamba inquiry

In the meantime, this is what we have been using with media per OCSP and OGC:

EPA is currently reviewing the court decision and will move promptly to address the Court's directive. — EPA Spokesperson

From: Dunn, Alexandra <dunn.alexandra@epa.gov>

Sent: Thursday, June 4, 2020 9:19 AM

To: Walker, Mary <walker.mary@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>; Block, Molly <block.molly@epa.gov>

Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>

Subject: RE: Dicamba inquiry

Mary,

We are on this this morning. We are assessing how the decision will roll out. We will have a statement asap.

Alexandra Dapolito Dunn, Esq.
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
US Environmental Protection Agency
Washington, DC

From: Walker, Mary <walker.mary@epa.gov>

Sent: Thursday, June 4, 2020 9:15 AM

To: Dunn, Alexandra <dunn.alexandra@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>

Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>

Subject: Dicamba inquiry

Good morning,

I know you are all already contemplating this but just got a call from one of our Ag Commissioners – Gary Black from GA:

- 1) communicating deep concern given that farmers have already made growing decisions and are in the middle of growing season and concerned that Bayer and BASF are already planning to pull back on supplies to retailers and
- 2) asking if we had a statement on our plans here.

I told him I'd get back with any statement we may have – would like at least to let him know where we are and what farmers can expect if that is possible. There is no doubt that he will be speaking publicly today on this. I think he'd like to say that EPA is standing with farmers...

Thanks
Mary

Mary Salmon Walker | Regional Administrator
US Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, GA 30303
Tel: (404) 562-8357

Message

From: Knorr, Michele [knorr.michele@epa.gov]
Sent: 5/1/2020 5:47:29 PM
To: Garrison, Scott [Garrison.Scott@epa.gov]
Subject: Re: List of products and dates

Awesome. Sorry I missed it.

Michele Knorr
OGC
202-564-5631

On May 1, 2020, at 1:41 PM, Garrison, Scott <Garrison.Scott@epa.gov> wrote:

Confidential communication for internal deliberations only. Attorney-client privilege. Do not distribute outside EPA.

I used both, the one you provided was cc

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Friday, May 01, 2020 1:39 PM
To: Garrison, Scott <Garrison.Scott@epa.gov>
Subject: Re: List of products and dates

I think this is the bad address for her. She did not receive my email with the list. I had to send it again with the other email address I gave you. Hopefully she confirms receipt and it is only an issue for me.

Michele Knorr
OGC
202-564-5631

On May 1, 2020, at 1:30 PM, Garrison, Scott <Garrison.Scott@epa.gov> wrote:

Confidential communication for internal deliberations only. Attorney-client privilege.

Ex. 5 Attorney Client (AC)

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Friday, May 01, 2020 9:32 AM
To: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>; O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>; Grosko, Brett (ENRD) <BGrosko@ENRD.USDOJ.GOV>; Garrison, Scott <Garrison.Scott@epa.gov>; Perlis, Robert <Perlis.Robert@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>
Subject: List of products and dates

Bayer Xtendimax with vaporgrip technology (EPA Reg. No. 524-617) – Contains the active ingredient diglycolamine salt of dicamba. EPA first registered the OTT uses (new uses on an already registered product) on November 9, 2016
https://www3.epa.gov/pesticides/chem_search/ppls/000524-00617-20161109.pdf. EPA amended (increased labeling restrictions) on October 12, 2017
https://www3.epa.gov/pesticides/chem_search/ppls/000524-00617-20171012.pdf
EPA Reg. No. 524-617 was reissued on November 1, 2018
https://www3.epa.gov/pesticides/chem_search/ppls/000524-00617-20181101.pdf
There is a docket for Xtendimax new uses <https://www.regulations.gov/docket?D=EPA-HQ-OPP-2016-0187>

BASF Engenia – (EPA Reg. No. 7969-345) Contains the active ingredient BAPMA salt of dicamba. EPA first registered on December 20, 2016
https://www3.epa.gov/pesticides/chem_search/ppls/007969-00345-20161220.pdf. EPA amended the registration (increased labeling restrictions) on October 12, 2017
https://www3.epa.gov/pesticides/chem_search/ppls/007969-00345-20171012.pdf
EPA Reg. No. 7969-345 was reissued on November 2, 2018
https://www3.epa.gov/pesticides/chem_search/ppls/007969-00345-20181102.pdf

Corteva FeXapan – (EPA Reg. No. 352-913) Original registration (2015). Contains diglycolamine salt of dicamba (vaporgrip technology). EPA first registered the OTT uses on February 7, 2017 https://www3.epa.gov/pesticides/chem_search/ppls/000352-00913-20170207.pdf This is the same as another registered product for this use. For CBI purposes not stating which one.
EPA Reg. No. 352-913 was reissued on November 5, 2020
https://www3.epa.gov/pesticides/chem_search/ppls/000352-00913-20181105.pdf

Syngenta Tavium – (EPA Reg. No. 100-1623) This product is a combination of metolachlor (another herbicide) and diglycolamine salt of dicamba (vaporgrip technology). EPA first registered on April 5, 2019 and contains the vaporgrip technology for the OTT uses. https://www3.epa.gov/pesticides/chem_search/ppls/000100-01623-20190405.pdf

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

-----Original Appointment-----

From: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>

Sent: Thursday, April 30, 2020 10:33 AM

To: Buckley, Sarah (ENRD); O'Donnell, Jessica (ENRD); Grosko, Brett (ENRD); Knorr, Michele; Garrison, Scott; Perlis, Robert; Koch, Erin

Subject: Dicamba supplemental filing discussion

When: Friday, May 01, 2020 9:00 AM-9:30 AM (UTC-05:00) Eastern Time (US & Canada).

Where: 866-410-9426, 1711883#

Message

From: Goerke, Ariadne [Goerke.Ariadne@epa.gov]
Sent: 6/4/2020 11:02:07 PM
To: Fotouhi, David [Fotouhi.David@epa.gov]; Lis-Coghlan, Kamila [lis-coghlan.kamila@epa.gov]; Cole, Joseph E. [cole.josephe@epa.gov]; Knorr, Michele [knorr.michele@epa.gov]; Koch, Erin [Koch.Erin@epa.gov]; Garrison, Scott [Garrison.Scott@epa.gov]; Willey, Katharine [willey.katharine@epa.gov]
Subject: FW: Dicamba
Attachments: Ninth Circuit Court Ruling on Dicamba_Secretary Naig_060420.pdf

FYI – Short letter from Iowa requesting EPA provide guidance “about what this ruling means for producers in Iowa, and presents options to allow retailers and farmers to apply existing stocks during the 2020 growing season.”

Ariadne Goerke
Acting Associate Deputy General Counsel
U.S. Environmental Protection Agency
202-564-5471 (office)
202-505-0535 (cell)

From: Carter, Brittany S. <carter.brittany@epa.gov>
Sent: Thursday, June 4, 2020 6:18 PM
To: Block, Molly <block.molly@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>
Cc: Woods, Andrea <Woods.Andrea@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Voyles, Travis <Voyles.Travis@epa.gov>; Doyle, Brett <doyle.brett@epa.gov>
Subject: RE: Dicamba

FYI, just received this letter attached.

From: Block, Molly <block.molly@epa.gov>
Sent: Thursday, June 4, 2020 3:32 PM
To: Dennis, Allison <Dennis.Allison@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>
Cc: Woods, Andrea <Woods.Andrea@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Carter, Brittany S. <carter.brittany@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Voyles, Travis <Voyles.Travis@epa.gov>; Doyle, Brett <doyle.brett@epa.gov>
Subject: RE: Dicamba

I'd hold off on the final paragraph until Administrator has made a decision on the path forward. As such, here's an updated draft. Again we need to know how strong Wheeler wants to be as well.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: Dennis, Allison <Dennis.Allison@epa.gov>

Sent: Thursday, June 4, 2020 3:16 PM

To: Block, Molly <block.molly@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>

Cc: Woods, Andrea <Woods.Andrea@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Carter, Brittany S.

<carter.brittanys@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Brazauskas, Joseph

<brazauskas.joseph@epa.gov>; Voyles, Travis <Voyles.Travis@epa.gov>; Doyle, Brett <doyle.brett@epa.gov>

Subject: RE: Dicamba

Send as soon as possible as DOJ will need to see them.

FYI- Alex is planning to brief the Administrator on this decision at 430 today. She invited DOJ Jon Brightbill to the call; he would like his attorney working on the case to join as well.

From: Block, Molly <block.molly@epa.gov>

Sent: Thursday, June 04, 2020 2:57 PM

To: Dennis, Allison <Dennis.Allison@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>

Cc: Woods, Andrea <Woods.Andrea@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Carter, Brittany S.

<carter.brittanys@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Brazauskas, Joseph

<brazauskas.joseph@epa.gov>; Voyles, Travis <Voyles.Travis@epa.gov>; Doyle, Brett <doyle.brett@epa.gov>

Subject: RE: Dicamba

Edits coming shortly.

Thanks!

From: Dennis, Allison <Dennis.Allison@epa.gov>

Sent: Thursday, June 4, 2020 2:47 PM

To: Block, Molly <block.molly@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>

Cc: Woods, Andrea <Woods.Andrea@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Carter, Brittany S.

<carter.brittanys@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Brazauskas, Joseph

<brazauskas.joseph@epa.gov>; Voyles, Travis <Voyles.Travis@epa.gov>; Doyle, Brett <doyle.brett@epa.gov>

Subject: RE: Dicamba

This statement has been approved by OGC/Alex/Carrie. OGC is running this by the DOJ Litigation team now. Do you have any edits and can you run it by the Administrator when that makes most sense? -Allison

EPA Responds to Ninth Circuit Vacatur of Dicamba Registrations

WASHINGTON—Yesterday, the U.S. Ninth Circuit Court of Appeals issued an order vacating three of U.S. Environmental Protection Agency's (EPA) registrations containing the active ingredient dicamba (Xtendimax with Vaporgrip Technology (EPA Reg. No. 524-617), Engenia – (EPA Reg. No. 7969-345), FeXapan – (EPA Reg. No. 352-913), which is a valuable pest control tool for America's farmers. EPA has released the following statement in response:

We are disappointed with the decision and agree with the Court that this order will place a great hardship on America's farmers, especially with the 2020 growing season well underway.

It is the position of EPA that, under the court's mandate, the registrations listed above are now unregistered pesticides and, as such cannot be distributed or sold. This is effective immediately and applies nationwide. Growers in possession of any of these products are strongly urged not to distribute or sell these products and refrain from using them until further guidance is provided.

From: Block, Molly <block.molly@epa.gov>

Sent: Thursday, June 04, 2020 2:28 PM

To: Dennis, Allison <Dennis.Allison@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>

Cc: Woods, Andrea <Woods.Andrea@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Carter, Brittany S.

<carter.brittany@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Brazauskas, Joseph

<brazauskas.joseph@epa.gov>; Voyles, Travis <Voyles.Travis@epa.gov>; Doyle, Brett <doyle.brett@epa.gov>

Subject: RE: Dicamba

Checking on the status of the release.

From: Block, Molly

Sent: Thursday, June 4, 2020 12:06 PM

To: Dennis, Allison <Dennis.Allison@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>

Cc: Woods, Andrea <Woods.Andrea@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Carter, Brittany S.

<carter.brittany@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Brazauskas, Joseph

<brazauskas.joseph@epa.gov>; Voyles, Travis <Voyles.Travis@epa.gov>; Brett Doyle (doyle.brett@epa.gov)

<doyle.brett@epa.gov>

Subject: RE: Dicamba

+ Intergov

From: Block, Molly

Sent: Thursday, June 4, 2020 12:05 PM

To: Dennis, Allison <Dennis.Allison@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>

Cc: Woods, Andrea <Woods.Andrea@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Voyles, Travis <Voyles.Travis@epa.gov>; Brett Doyle

(doyle.brett@epa.gov) <doyle.brett@epa.gov>

Subject: RE: Dicamba

Great! Please get a draft over to OPA when you can. It will definitely need to be approved by Administrator Wheeler.

I would defer to OGC on whether it needs to be elevated to DOJ.

Adding OCIR/OPE for their awareness.

From: Dennis, Allison <Dennis.Allison@epa.gov>

Sent: Thursday, June 4, 2020 12:03 PM

To: Block, Molly <block.molly@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>

Cc: Woods, Andrea <Woods.Andrea@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>

Subject: RE: Dicamba

Report out from the call w/Alex, Fotouhi and others:

Let's issue a proactive statement (like a PR) NLT 3 pm today. This statement can be used for inquiries from hill, media, industry, etc. I am working on the statement now and should have something for Carrie/OGC/Rick review in next 30 min. , then Alex will review, then OPA and others as needed (DOJ? Administrator?)

Derrick is setting up two separate calls with stakeholders to occur this afternoon to take questions and hear concerns:

2:30- 3pm w/NASDA and AAPCO

3-3:30 w/ Cotton Soy Retailers, FB, and NCFC

We will also host a separate call w/ the agency's ag advisors. Timing is TBD.

Let me know ASAP if you have any concerns with this approach.

From: Block, Molly <block.molly@epa.gov>

Sent: Thursday, June 04, 2020 10:35 AM

To: Dennis, Allison <Dennis.Allison@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>

Cc: Woods, Andrea <Woods.Andrea@epa.gov>

Subject: RE: Dicamba

Thanks!! I'll make sure Ken knows the update and will wait to hear back from you and OGC.

From: Dennis, Allison <Dennis.Allison@epa.gov>

Sent: Thursday, June 4, 2020 10:33 AM

To: Block, Molly <block.molly@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>

Cc: Woods, Andrea <Woods.Andrea@epa.gov>

Subject: RE: Dicamba

Ok, I will reach out to OGC now to work on a beefier response.

Here's my work cell: 202 257 5629

Also, for our itty bitty statement, let's make the following change :

EPA is currently reviewing the court decision and will move promptly to address the Court's directive order —EPA Spokesperson

From: Block, Molly <block.molly@epa.gov>
Sent: Thursday, June 04, 2020 10:24 AM
To: Dennis, Allison <Dennis.Allison@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>
Cc: Woods, Andrea <Woods.Andrea@epa.gov>
Subject: RE: Dicamba

Also what's the best number to reach you at?

I can be reached at Ex. 5 Deliberative Process (DP)

From: Block, Molly
Sent: Thursday, June 4, 2020 10:23 AM
To: Dennis, Allison <Dennis.Allison@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>
Cc: Woods, Andrea <Woods.Andrea@epa.gov>
Subject: RE: Dicamba

Would you mind taking lead on this and keeping me cc'd? I don't want to double efforts you and OCSPP are already taking?

From: Dennis, Allison <Dennis.Allison@epa.gov>
Sent: Thursday, June 4, 2020 10:14 AM
To: Block, Molly <block.molly@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>
Cc: Woods, Andrea <Woods.Andrea@epa.gov>
Subject: RE: Dicamba

Molly- how do you want to handle coordination for today's beefier response re: Dicamba? I can work with OGC (Camilla?) if you like unless you already on it. It would be good to have a statement done by noon that we can post to our website and issue to stakeholders.

From: Block, Molly <block.molly@epa.gov>
Sent: Thursday, June 04, 2020 10:07 AM
To: Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>
Cc: Woods, Andrea <Woods.Andrea@epa.gov>
Subject: RE: Dicamba

Thanks!

I know we have the we're reviewing the decision statement, but we should be thinking about something with more substance.

That may have to come from OGC.

From: Drinkard, Andrea <Drinkard.Andrea@epa.gov>
Sent: Thursday, June 4, 2020 10:05 AM
To: Block, Molly <block.molly@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>
Subject: Dicamba

Looping the two of you together so that we can stay coordinated on the response, Ken had forwarded some of the inquiries onto OCSPP already.

Andrea Drinkard
Senior Advisor

EPA Office of Public Affairs

Desk: 202.564.1601

Cell: 202.236.7765

Message

From: Knorr, Michele [knorr.michele@epa.gov]
Sent: 5/1/2020 4:58:50 PM
To: Garrison, Scott [Garrison.Scott@epa.gov]
CC: Koch, Erin [Koch.Erin@epa.gov]
Subject: RE: Language re formulators

Minor edits below to be a little less specific.

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Garrison, Scott <Garrison.Scott@epa.gov>
Sent: Friday, May 01, 2020 11:54 AM
To: Knorr, Michele <knorr.michele@epa.gov>
Cc: Koch, Erin <Koch.Erin@epa.gov>
Subject: Language re formulators

Confidential communication for internal deliberations only. Attorney-client privilege. Do not distribute outside EPA.

Does this accomplish what you wanted?

Ex. 5 Attorney Client (AC)

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

Message

From: Knorr, Michele [knorr.michele@epa.gov]
Sent: 6/4/2020 7:37:05 PM
To: Dennis, Allison [Dennis.Allison@epa.gov]
CC: Goerke, Ariadne [Goerke.Ariadne@epa.gov]; Cole, Joseph E. [cole.josephe@epa.gov]; Garrison, Scott [Garrison.Scott@epa.gov]; Koch, Erin [Koch.Erin@epa.gov]
Subject: RE: For OGC/Rick/Carrie Urgent Review: Dicamba statement; DDL: 1:30 PM

Should I send this to DOJ?

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Dennis, Allison <Dennis.Allison@epa.gov>
Sent: Thursday, June 04, 2020 3:35 PM
To: Knorr, Michele <knorr.michele@epa.gov>
Subject: Re: For OGC/Rick/Carrie Urgent Review: Dicamba statement; DDL: 1:30 PM

From OPA:

I'd hold off on the final paragraph until Administrator has made a decision on the path forward. As such, here's an updated draft. Again we need to know how strong Wheeler wants to be as well.

EPA Responds to Ninth Circuit Vacatur of Dicamba Registrations

WASHINGTON—Yesterday, the U.S. Ninth Circuit Court of Appeals issued an order vacating three of U.S. Environmental Protection Agency's (EPA) registrations containing the active ingredient dicamba (Xtendimax with Vaporgrip Technology (EPA Reg. No. 524-617), Engenia – (EPA Reg. No. 7969-345), FeXapan – (EPA Reg. No. 352-913), which is a valuable pest control tool for America's farmers. EPA has released the following statement in response:

We are disappointed with the decision. The 2020 growing season is well underway and this creates undue burden for our first conservationists – farmers. The Court even noted in this order that it will place a great hardship on America's farmers. This ruling implicates millions of acres of crops, millions of dollars already spent by farmers, and the food and fiber Americans across the country rely on to feed their families.

EPA will provide further guidance in the future.

Sent from my iPhone

On Jun 4, 2020, at 2:54 PM, Knorr, Michele <knorr.michele@epa.gov> wrote:

I'm trying. I told them we wanted to get this out by 4.

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Dennis, Allison <Dennis.Allison@epa.gov>
Sent: Thursday, June 04, 2020 2:54 PM
To: Knorr, Michele <knorr.michele@epa.gov>
Subject: RE: For OGC/Rick/Carrie Urgent Review: Dicamba statement; DDL: 1:30 PM

Is it possible to get their feedback NLT 3:30 or sooner? We really want to get this out the door as soon as possible.

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Thursday, June 04, 2020 2:53 PM
To: Dennis, Allison <Dennis.Allison@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>
Cc: Keigwin, Richard <Keigwin.Richard@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>;
Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>;
Bolen, Derrick <bolen.derrick@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Fotouhi, David
<Fotouhi.David@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Subject: RE: For OGC/Rick/Carrie Urgent Review: Dicamba statement; DDL: 1:30 PM

I sent it along to DOJ.

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Dennis, Allison <Dennis.Allison@epa.gov>
Sent: Thursday, June 04, 2020 2:45 PM
To: Knorr, Michele <knorr.michele@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>
Cc: Keigwin, Richard <Keigwin.Richard@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>;
Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>;
Bolen, Derrick <bolen.derrick@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Fotouhi, David
<Fotouhi.David@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Subject: RE: For OGC/Rick/Carrie Urgent Review: Dicamba statement; DDL: 1:30 PM

Here you go:

EPA Responds to Ninth Circuit Vacatur of Dicamba Registrations

WASHINGTON—Yesterday, the U.S. Ninth Circuit Court of Appeals issued an order vacating three of U.S. Environmental Protection Agency's (EPA) registrations containing the active ingredient dicamba (Xtendimax with Vaporgrip Technology (EPA Reg. No. 524-617), Engenia – (EPA Reg. No. 7969-345), FeXapan – (EPA Reg. No. 352-913), which is a valuable pest control tool for America's farmers. EPA has released the following statement in response:

We are disappointed with the decision and agree with the Court that this order will place a great hardship on America's farmers, especially with the 2020 growing season well underway.

Ex 5 AC/DP
Ex. 5 AC/DP

From: Knorr, Michele <knorr.michele@epa.gov>

Sent: Thursday, June 04, 2020 2:42 PM

To: Dennis, Allison <Dennis.Allison@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>

Cc: Keigwin, Richard <Keigwin.Richard@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>

Subject: RE: For OGC/Rick/Carrie Urgent Review: Dicamba statement; DDL: 1:30 PM

Allison – please send me a clean version that I can send to DOJ. Thanks

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Dennis, Allison <Dennis.Allison@epa.gov>

Sent: Thursday, June 04, 2020 2:41 PM

To: Dunn, Alexandra <dunn.alexandra@epa.gov>

Cc: Knorr, Michele <knorr.michele@epa.gov>; Keigwin, Richard <Keigwin.Richard@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>

Subject: RE: For OGC/Rick/Carrie Urgent Review: Dicamba statement; DDL: 1:30 PM

Got it. We will issue as statement from EPA. I'll accept these edits move them on to OPA as we await any edits from DOJ litigation team

From: Dunn, Alexandra <dunn.alexandra@epa.gov>
Sent: Thursday, June 04, 2020 2:38 PM
To: Dennis, Allison <Dennis.Allison@epa.gov>
Cc: Knorr, Michele <knorr.michele@epa.gov>; Keigwin, Richard <Keigwin.Richard@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
Subject: Re: For OGC/Rick/Carrie Urgent Review: Dicamba statement; DDL: 1:30 PM

Please do not attribute the statement to administrator wheeler right now

Alexandra Dapolito Dunn, Esq.
Assistant Administrator
Office of Chemical Safety & Pollution Prevention
U.S. Environmental Protection Agency
Washington, DC

Sent from my iPhone

On Jun 4, 2020, at 2:02 PM, Dennis, Allison <Dennis.Allison@epa.gov> wrote:

Perfect. Here's a clean version taking into account Alex's edits:

EPA Administrator Wheeler Responds to Ninth Circuit Vacatur of Three Dicamba Registrations

WASHINGTON—Yesterday, the U.S. Ninth Circuit Court of Appeals issued an order vacating the U.S. Environmental Protection Agency's (EPA) registration of dicamba, which is a valuable pest control tool for America's farmers. EPA Administrator Andrew Wheeler issued the following statement in response:

We are disappointed with the Court's decision and agree with the Court that this order will place a great hardship on America's farmers, especially as we enter the 2020 growing season.

Ex. 5 AC/DP

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Thursday, June 04, 2020 1:59 PM
To: Dennis, Allison <Dennis.Allison@epa.gov>
Cc: Keigwin, Richard <Keigwin.Richard@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>;

Fotouhi, David <Fotouhi.David@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>

Subject: Re: For OGC/Rick/Carrie Urgent Review: Dicamba statement; DDL: 1:30 PM

We are working on our edits right now.

Michele Knorr
OGC
202-564-5631

On Jun 4, 2020, at 1:55 PM, Dennis, Allison <Dennis.Allison@epa.gov>
wrote:

+ Alex

Here's the revised version below (see highlight). **OGC/Carrie**- any additional edits before I move this on to Alex? Reminder: We are trying to get this statement out NLT 3 pm today. -Allison

**EPA Administrator Wheeler Responds to Ninth Circuit
Vacatur of Three Dicamba Registrations**

WASHINGTON—Yesterday, the U.S. Ninth Circuit Court of Appeals issued an order vacating the U.S. Environmental Protection Agency's (EPA) registration of dicamba, which is a valuable pest control tool for America's farmers. EPA Administrator Andrew Wheeler issued the following statement in response:

We are disappointed with the Court's decision and agree with the Court that this order will place a great hardship on America's farmers, especially as we enter the 2020 growing season.

Ex. 5 AC/DP

From: Keigwin, Richard <Keigwin.Richard@epa.gov>

Sent: Thursday, June 04, 2020 12:54 PM

To: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Dennis, Allison

<Dennis.Allison@epa.gov>; Meadows, Carrie Vicenta
<Meadows.CarrieVicenta@epa.gov>; Cole, Joseph E.
<cole.josephe@epa.gov>
Cc: Bolen, Derrick <bolen.derrick@epa.gov>; Goerke, Ariadne
<Goerke.Ariadne@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>;
Fotouhi, David <Fotouhi.David@epa.gov>
Subject: RE: For OGC/Rick/Carrie Urgent Review: Dicamba statement;
DDL: 1:30 PM

We probably need to be more specific about which dicamba registrations we mean, since there are a few hundred registered products containing dicamba. I don't believe the Court's decision impacts ALL dicamba registrations. Rather, it directly impacts the registrations for 3 of the 4 products with the "over-the-top" uses on their labels.

From: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>
Sent: Thursday, June 04, 2020 12:44 PM
To: Dennis, Allison <Dennis.Allison@epa.gov>; Keigwin, Richard
<Keigwin.Richard@epa.gov>; Meadows, Carrie Vicenta
<Meadows.CarrieVicenta@epa.gov>; Cole, Joseph E.
<cole.josephe@epa.gov>
Cc: Bolen, Derrick <bolen.derrick@epa.gov>; Goerke, Ariadne
<Goerke.Ariadne@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>;
Fotouhi, David <Fotouhi.David@epa.gov>
Subject: RE: For OGC/Rick/Carrie Urgent Review: Dicamba statement;
DDL: 1:30 PM

+ David & Michele

From: Dennis, Allison <Dennis.Allison@epa.gov>
Sent: Thursday, June 4, 2020 12:41 PM
To: Keigwin, Richard <Keigwin.Richard@epa.gov>; Meadows, Carrie
Vicenta <Meadows.CarrieVicenta@epa.gov>; Lis-Coghlan, Kamila <lis-
coghlan.kamila@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>
Cc: Bolen, Derrick <bolen.derrick@epa.gov>; Goerke, Ariadne
<Goerke.Ariadne@epa.gov>
Subject: For OGC/Rick/Carrie Urgent Review: Dicamba statement; DDL:
1:30 PM

All- looking for your edits NLT 1:30 pm today. The Administrator will need to review. Will DOJ need to review as well? -Allison

EPA Administrator Wheeler Responds to Ninth Circuit Vacatur of Dicamba Registrations

WASHINGTON—Yesterday, the U.S. Ninth Circuit Court of Appeals issued an order vacating the U.S. Environmental Protection Agency's (EPA) registration of dicamba, which is a valuable pest control tool for America's farmers. EPA

Administrator Andrew Wheeler issued the following statement in response:

We are disappointed with the Court's decision and agree with the Court that this order will place a great hardship on America's farmers, especially as we enter the 2020 growing season.

Ex. 5 AC/DP

Allison Dennis
Communications Director
Office of Chemical Safety and Pollution Prevention
Desk: (202) 564-1985; Cell: (202) 257-5629
Follow OCSPP on Twitter: @EPACChemSafety

Message

From: O'Donnell, Jessica (ENRD) [Jessica.O'Donnell@usdoj.gov]
Sent: 5/12/2020 3:06:37 PM
To: Knorr, Michele [knorr.michele@epa.gov]; Garrison, Scott [Garrison.Scott@epa.gov]
CC: Grosko, Brett (ENRD) [Brett.Grosko@usdoj.gov]; Buckley, Sarah (ENRD) [Sarah.Buckley@usdoj.gov]
Subject: RE: Our edits/comments on the dicamba brief

The statement in the brief that we are looking to support is that Engenia is different from Xtendimax and required additional data. So, it sounds like it is the 2016 memo that we want.

Ex. 5 Attorney Client (AC)

Thanks,
Jessica

Jessica O'Donnell
Assistant Section Chief
Environmental Defense Section
202.305.0851

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Tuesday, May 12, 2020 10:43 AM
To: O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Cc: Grosko, Brett (ENRD) <BGrosko@ENRD.USDOJ.GOV>; Buckley, Sarah (ENRD) <SBuckley@ENRD.USDOJ.GOV>
Subject: RE: Our edits/comments on the dicamba brief

Ex. 5 Attorney Client (AC)

As for a contact at BASF, we get that for you. We have not been in contact with them, but our program folks are all the time.

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: O'Donnell, Jessica (ENRD) <Jessica.O'Donnell@usdoj.gov>
Sent: Tuesday, May 12, 2020 10:31 AM
To: Garrison, Scott <Garrison.Scott@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>
Cc: Grosko, Brett (ENRD) <Brett.Grosko@usdoj.gov>; Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Subject: RE: Our edits/comments on the dicamba brief

Ex. 5 Attorney Client (AC)

Jessica O'Donnell
Assistant Section Chief
Environmental Defense Section
202.305.0851

From: Garrison, Scott <Garrison.Scott@epa.gov>
Sent: Tuesday, May 12, 2020 9:42 AM
To: Knorr, Michele <knorr.michele@epa.gov>
Cc: O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>; Grosko, Brett (ENRD) <BGrosko@ENRD.USDOJ.GOV>; Buckley, Sarah (ENRD) <SBuckley@ENRD.USDOJ.GOV>
Subject: RE: Our edits/comments on the dicamba brief

Confidential communication for internal deliberations only. Attorney-client privilege. Do not distribute outside EPA.

It is a cite to the 2016 memo:

USEPA, 2016g. Dicamba BAPMA salt – Bridging Memorandum for Dicamba BAPMA Salt (Engenia) to Dicamba Acid and Dicamba DGA Salt. D402518. Environmental Fate and Effects Division, Office of Pesticide Programs, Office of Chemical Safety and Pollution Prevention. Washington, D.C. December 2016.

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Knorr, Michele <knorr.michele@epa.gov>

Sent: Tuesday, May 12, 2020 9:37 AM

To: Garrison, Scott <Garrison.Scott@epa.gov>

Cc: O'Donnell, Jessica (ENRD) <Jessica.O'Donnell@usdoj.gov>; Grosko, Brett (ENRD) <Brett.Grosko@usdoj.gov>; Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>

Subject: Re: Our edits/comments on the dicamba brief

Scott -I think we want the 2016 bridging memo. Is the one you are referring the 2018 memo? Just want to make sure we provide the right one for the argument. Thanks

Michele Knorr
OGC
202-564-5631

On May 12, 2020, at 9:35 AM, Garrison, Scott <Garrison.Scott@epa.gov> wrote:

Confidential communication for internal deliberations only. Attorney-client privilege. Do not distribute outside EPA.

Michele's right, there's no explicit petition authority provision, sec. 16(a) is as close as it gets. You could also cite sec. 6(b) and (d) for the cancellation proceeding.

The bridging memo is listed as a reference in the 11/1/2018 "Summary of New Information and Analysis of Dicamba Use on Dicamba-Tolerant (DT) Cotton and Soybean Including Updated Effects Determinations for Federally Listed Threatened and Endangered Species", which is ER 331. The specific reference to the bridging memo is at ER 393.

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Knorr, Michele <knorr.michele@epa.gov>

Sent: Tuesday, May 12, 2020 8:24 AM

To: O'Donnell, Jessica (ENRD) <Jessica.O'Donnell@usdoj.gov>

Cc: Grosko, Brett (ENRD) <Brett.Grosko@usdoj.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>

Subject: Re: Our edits/comments on the dicamba brief

Brett has the memo and it has had a cbi check and is cleared for publication. Brett - can you forward the memo to Jessica? I'm in meetings most of the morning and this is my 2 minute break. As for the petitioning, they can petition under the APA and then section 16(a) references petitions to cancel.

Let us know if you need more. We will take a quick look at the brief later.
Thanks again for all the work on this!!!

Michele Knorr
OGC
202-564-5631

On May 12, 2020, at 6:35 AM, O'Donnell, Jessica (ENRD)
<Jessica.O'Donnell@usdoj.gov> wrote:

<image002.gif>
Michele –

Thank you for getting me your final comments early! The attached is the draft I sent my front office yesterday afternoon. I was not able to incorporate all of the new text due to the 10-page limit, but I think this draft captures the essential substance of most of the edits in one way or another. E.g., I couldn't add the dates or links for the Fexapan and Engenia registrations, but the labels and orders are in the record and the draft provides the record citations to those documents.

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

I still need a few cites. Can you provide me with the following:
The proposed Ex. A – the bridging memo. Is this document cited on EPA's website or regulations.gov? Also please confirm there are not confidentiality issues with attaching this document.
On p. 10 – a statutory or regulatory cite for the sentence explaining that parties can seek cancellation or suspension of the pesticides.

Let me know if you have any other questions or want to discuss anything.

Thanks,
Jessica
Jessica O'Donnell
Assistant Section Chief
Environmental Defense Section
202.305.0851

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Monday, May 11, 2020 12:31 PM
To: O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>; Grosko, Brett (ENRD) <BGrosko@ENRD.USDOJ.GOV>
Cc: Garrison, Scott <Garrison.Scott@epa.gov>
Subject: Our edits/comments on the dicamba brief

We are early again with our comments – yay! This includes all OGC comments. Let us know if we should discuss any of these. Also, can you update us on whether there will be a call with Bayer counsel about what they intend to focus on in their brief? Thanks again for all the hard work on this.

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

<ENV_DEFENSE-#918333-v2-
Dicamba_II_Revised_Draft_Supplemental_Brief_clean_version.DOCX>

Message

From: Grosko, Brett (ENRD) [Brett.Grosko@usdoj.gov]
Sent: 5/5/2020 2:30:59 PM
To: Knorr, Michele [knorr.michele@epa.gov]
CC: Garrison, Scott [Garrison.Scott@epa.gov]
Subject: Re: 100094_D402518_Other-Bridging_12_20_16 (1).pdf

Thanks, Michele!

On May 5, 2020, at 10:25 AM, Knorr, Michele <knorr.michele@epa.gov> wrote:

CBI/sensitive material review complete and no issues found. This document does not need to be filed under seal. Let us know if you decide you need the other one reviewed as well. Thanks

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Grosko, Brett (ENRD) <Brett.Grosko@usdoj.gov>
Sent: Tuesday, May 05, 2020 8:51 AM
To: Knorr, Michele <knorr.michele@epa.gov>
Cc: Garrison, Scott <Garrison.Scott@epa.gov>
Subject: Re: 100094_D402518_Other-Bridging_12_20_16 (1).pdf

I'd like to attach this, can you please check to see if it contains CBI-protected material?

On May 4, 2020, at 5:40 PM, Knorr, Michele <knorr.michele@epa.gov> wrote:

Here is the 2016 document for bridging. This bridging document is dated after the Xtendimax registration was granted in 2016.
<100094_D402518_Other-Bridging_12_20_16 (1).pdf>

Message

From: Knorr, Michele [knorr.michele@epa.gov]
Sent: 5/5/2020 1:22:37 PM
To: Grosko, Brett (ENRD) [Brett.Grosko@usdoj.gov]
CC: Garrison, Scott [Garrison.Scott@epa.gov]
Subject: RE: 100094_D402518_Other-Bridging_12_20_16 (1).pdf

We will get it reviewed for CBI. Thanks

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Grosko, Brett (ENRD) <Brett.Grosko@usdoj.gov>
Sent: Tuesday, May 05, 2020 8:51 AM
To: Knorr, Michele <knorr.michele@epa.gov>
Cc: Garrison, Scott <Garrison.Scott@epa.gov>
Subject: Re: 100094_D402518_Other-Bridging_12_20_16 (1).pdf

I'd like to attach this, can you please check to see if it contains CBI-protected material?

On May 4, 2020, at 5:40 PM, Knorr, Michele <knorr.michele@epa.gov> wrote:

Here is the 2016 document for bridging. This bridging document is dated after the Xtendimax registration was granted in 2016.
<100094_D402518_Other-Bridging_12_20_16 (1).pdf>

Message

From: Knorr, Michele [knorr.michele@epa.gov]
Sent: 4/30/2020 8:01:49 PM
To: Garrison, Scott [Garrison.Scott@epa.gov]; Perlis, Robert [Perlis.Robert@epa.gov]; Koch, Erin [Koch.Erin@epa.gov]
Subject: RE: Dicamba Decision Document

Ex. 5 AC/AWP/DP

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Garrison, Scott <Garrison.Scott@epa.gov>
Sent: Thursday, April 30, 2020 4:01 PM
To: Knorr, Michele <knorr.michele@epa.gov>; Perlis, Robert <Perlis.Robert@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>
Subject: RE: Dicamba Decision Document

Confidential communication for internal deliberations only. Attorney-client privilege. Do not distribute outside EPA.

Ex. 5 AC/AWP/DP

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Thursday, April 30, 2020 3:51 PM
To: Perlis, Robert <Perlis.Robert@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>
Subject: RE: Dicamba Decision Document

I don't think v

Ex. 5 Deliberative Process (DP)

Ex. 5 AC/AWP/DP

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office

Office of General Counsel
202-564-5631

From: Perlis, Robert <Perlis.Robert@epa.gov>

Sent: Thursday, April 30, 2020 3:46 PM

To: Garrison, Scott <Garrison.Scott@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>

Subject: RE: Dicamba Decision Document

Ex. 5 AC/AWP/DP

Bob Perlis
Pesticides and Toxic Substances Law Office
Office of General Counsel
US EPA
(202) 564-5636

From: Garrison, Scott <Garrison.Scott@epa.gov>

Sent: Thursday, April 30, 2020 2:56 PM

To: Knorr, Michele <knorr.michele@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Perlis, Robert <Perlis.Robert@epa.gov>

Subject: Dicamba Decision Document

Confidential communication for internal deliberations only. Attorney-client privilege. Do not distribute outside EPA.

Ex. 5 Attorney Client (AC)

My current 2 cents... what do you all think?

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

Message

From: Knorr, Michele [knorr.michele@epa.gov]
Sent: 6/4/2020 6:39:58 PM
To: Koch, Erin [Koch.Erin@epa.gov]; Garrison, Scott [Garrison.Scott@epa.gov]
Subject: FW: Edits to the press statement - newest 2:15

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>
Sent: Thursday, June 04, 2020 2:39 PM
To: Knorr, Michele <knorr.michele@epa.gov>
Cc: Fotouhi, David <Fotouhi.David@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>
Subject: RE: Edits to the press statement - newest 2:15

Ex. 5 Attorney Client (AC)

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Thursday, June 4, 2020 2:23 PM
To: Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
Subject: RE: Edits to the press statement - newest 2:15

Kamila/David - Do we have sign-off to send this version to DOJ?

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Goerke, Ariadne <Goerke.Ariadne@epa.gov>
Sent: Thursday, June 04, 2020 2:19 PM
To: Knorr, Michele <knorr.michele@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
Subject: RE: Edits to the press statement - newest 2:15

I will send back to Allison now and let her know the dicamba litigation team at DOJ is shepherding review. Anything else?

Ariadne Goerke

Acting Associate Deputy General Counsel
U.S. Environmental Protection Agency
202-564-5471 (office)
202-505-0535 (cell)

From: Knorr, Michele <knorr.michele@epa.gov>

Sent: Thursday, June 4, 2020 2:17 PM

To: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>

Subject: RE: Edits to the press statement - newest 2:15

I have touched based with DOJ and we are supposed to send the statement to the lit team for their review and they will shepherd it. Any other edits? Not sure who should send this back to Allison. I need to get on a call. Thanks

EPA Administrator Wheeler Responds to Ninth Circuit Vacatur of Dicamba Registrations

WASHINGTON—Yesterday, the U.S. Ninth Circuit Court of Appeals issued an order vacating

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>
Sent: Thursday, June 04, 2020 2:07 PM
To: Koch, Erin <Koch.Erin@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>
Subject: RE: Edits to the press statement - see what you think

please see below for a few additional edits

From: Koch, Erin <Koch.Erin@epa.gov>
Sent: Thursday, June 4, 2020 2:03 PM
To: Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>
Subject: RE: Edits to the press statement - see what you think

Works for me.

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Thursday, June 04, 2020 2:01 PM
To: Koch, Erin <Koch.Erin@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>
Subject: Edits to the press statement - see what you think

We need to send this to DOJ as well.

EPA Administrator Wheeler Responds to Ninth Circuit Vacatur of Dicamba Registrations

WASHINGTON—Yesterday, the U.S. Ninth Circuit Court of Appeals issued an order vacating

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

Message

From: Knorr, Michele [knorr.michele@epa.gov]
Sent: 5/4/2020 9:38:22 PM
To: Grosko, Brett (ENRD) [Brett.Grosko@usdoj.gov]
CC: Garrison, Scott [Garrison.Scott@epa.gov]
Subject: 100094_D402518_Other-Bridging_12_20_16 (1).pdf
Attachments: 100094_D402518_Other-Bridging_12_20_16 (1).pdf

Here is the 2016 document for bridging. This bridging document is dated after the Xtendimax registration was granted in 2016.

Message

From: Knorr, Michele [knorr.michele@epa.gov]
Sent: 4/30/2020 7:41:25 PM
To: Koch, Erin [Koch.Erin@epa.gov]; Garrison, Scott [Garrison.Scott@epa.gov]; Perlis, Robert [Perlis.Robert@epa.gov]
Subject: Interesting statement by Petitioners that I just found

Ex. 5 AC/AWP/DP

This petition seeks review of the October 31, 2018 decision by the United States Environmental Protection Agency (EPA) to continue the new uses registrations of the pesticide dicamba on dicamba-resistant cotton and soybean, Excerpts of Record (ER)0001-0024 (“Registration Decision for the Continuation of Uses of Dicamba on Dicamba Tolerant Cotton and Soybean”). This Court has jurisdiction under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which provides for review in the courts of appeals of “any order issued by the [EPA] Administrator following a public hearing.” 7 U.S.C. § 136n(b).¹ EPA’s October 31, 2018 decision is a continuation of the new uses initially approved by EPA in 2016.² ECF 1-6 at 2-3; ER0003.³ Petitioners timely filed this petition for review. 7 U.S.C. § 136n(b), 40 C.F.R. § 23.6.

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

Message

From: Knorr, Michele [knorr.michele@epa.gov]
Sent: 4/29/2020 9:21:34 PM
To: Garrison, Scott [Garrison.Scott@epa.gov]
CC: Koch, Erin [Koch.Erin@epa.gov]
Subject: RE: Who is on hook to write note to Kamila and OPP/OCSP?

Ex. 5 AC/AWP/DP

As to addressees, Erin wanted to remind us that the note goes to Kamila and below due to Matt's recusal. And, then also to Alex, Rick, EFED, RD folks.

Thanks from Erin and me!

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Garrison, Scott <Garrison.Scott@epa.gov>
Sent: Wednesday, April 29, 2020 5:15 PM
To: Knorr, Michele <knorr.michele@epa.gov>
Cc: Koch, Erin <Koch.Erin@epa.gov>
Subject: RE: Who is on hook to write note to Kamila and OPP/OCSP?

Confidential communication for internal deliberations only. Attorney-client privilege. Do not distribute outside EPA.

For your consideration:

The 9th Circuit issued an order today following up on last week's oral argument in the dicamba case, National Family Farm Coalition, et al v. USEPA, et al. The full order is in the email chain below, the key parts are:

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

-----Original Message-----

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Wednesday, April 29, 2020 5:07 PM
To: Garrison, Scott <Garrison.Scott@epa.gov>
Subject: RE: Who is on hook to write note to Kamila and OPP/OCSP?

Great!

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office Office of General Counsel
202-564-5631

-----Original Message-----

From: Garrison, Scott <Garrison.Scott@epa.gov>
Sent: Wednesday, April 29, 2020 5:03 PM
To: Knorr, Michele <knorr.michele@epa.gov>
Cc: Koch, Erin <Koch.Erin@epa.gov>
Subject: RE: Who is on hook to write note to Kamila and OPP/OCSP?

Confidential communication for internal deliberations only. Attorney-client privilege. Do not distribute outside EPA.

I've got it. I'll send you a draft in the next 20 min or so...

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A) Office of General Counsel U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

-----Original Message-----

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Wednesday, April 29, 2020 4:20 PM
To: Garrison, Scott <Garrison.Scott@epa.gov>
Cc: Koch, Erin <Koch.Erin@epa.gov>
Subject: Re: Who is on hook to write note to Kamila and OPP/OCSP?

If you can't, shoot me an email, and I will. I was just concerned that press gets out on this before folks know about it.

Michele Knorr
OGC
202-564-5631

> On Apr 29, 2020, at 4:17 PM, Garrison, Scott <Garrison.Scott@epa.gov> wrote:
>
> Confidential communication for internal deliberations only. Attorney-client privilege. Do not distribute outside EPA.
>
> I guess that should be me. I've got something else to do right now, but I'll try to do it before dinner.
>
> Scott Garrison
> Pesticides and Toxic Substances Law Office (2333A) Office of General
> Counsel U.S. Environmental Protection Agency
> 202-564-4047
> garrison.scott@epa.gov
>
> -----Original Message-----
> From: Knorr, Michele <knorr.michele@epa.gov>
> Sent: Wednesday, April 29, 2020 4:14 PM
> To: Koch, Erin <Koch.Erin@epa.gov>
> Cc: Garrison, Scott <Garrison.Scott@epa.gov>
> Subject: Who is on hook to write note to Kamila and OPP/OCSPP?
>
>
>
> Michele Knorr
> OGC
> 202-564-5631
>

Message

From: O'Donnell, Jessica (ENRD) [Jessica.O'Donnell@usdoj.gov]
Sent: 4/29/2020 8:30:40 PM
To: Knorr, Michele [knorr.michele@epa.gov]; Buckley, Sarah (ENRD) [Sarah.Buckley@usdoj.gov]
CC: Garrison, Scott [Garrison.Scott@epa.gov]; Perlis, Robert [Perlis.Robert@epa.gov]; Koch, Erin [Koch.Erin@epa.gov]; Meghan Greenfield [Meghan.Greenfield@usdoj.gov]; Grosko, Brett (ENRD) [Brett.Grosko@usdoj.gov]
Subject: RE: 19-70115 National Family Farm Coalition, et al v. USEPA, et al "Order Filed (From Chambers)"

I am not available for a call with EPA before Friday. I am open 9-12 on Friday. My schedule is flexible on

Ex. 5 Attorney Client (AC)

Jessica O'Donnell
Assistant Section Chief
Environmental Defense Section
202.305.0851

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Wednesday, April 29, 2020 4:13 PM
To: Buckley, Sarah (ENRD) <SBuckley@ENRD.USDOJ.GOV>
Cc: Garrison, Scott <Garrison.Scott@epa.gov>; Perlis, Robert <Perlis.Robert@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>; Greenfield, Meghan (ENRD) <MGreenfiel@ENRD.USDOJ.GOV>; Grosko, Brett (ENRD) <BGrosko@ENRD.USDOJ.GOV>
Subject: Re: 19-70115 National Family Farm Coalition, et al v. USEPA, et al "Order Filed (From Chambers)"

Ex. 5 Attorney Client (AC)

Michele Knorr
OGC
202-564-5631

On Apr 29, 2020, at 4:09 PM, Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov> wrote:

Jessica is going to take the lead on drafting our response because I'm fully booked for the next two weeks. For my part, I would be available for a call tomorrow or Friday between 9 and 12.

Ex. 5 Attorney Client (AC)

Thanks,
Sarah

From: Knorr, Michele <knorr.michele@epa.gov>

Sent: Wednesday, April 29, 2020 2:18 PM

To: Buckley, Sarah (ENRD) <SBuckley@ENRD.USDOJ.GOV>; Garrison, Scott <Garrison.Scott@epa.gov>;
Perlis, Robert <Perlis.Robert@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; O'Donnell, Jessica (ENRD)
<JODonnell@enrd.usdoj.gov>; Greenfield, Meghan (ENRD) <MGreenfiel@ENRD.USDOJ.GOV>

Cc: Grosko, Brett (ENRD) <BGrosko@ENRD.USDOJ.GOV>

Subject: RE: 19-70115 National Family Farm Coalition, et al v. USEPA, et al "Order Filed (From Chambers)"

Should we get a call on the books? We can pull together our thoughts relatively quickly for a discussion. Let us know how you would like to proceed.

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>

Sent: Wednesday, April 29, 2020 2:13 PM

To: Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Perlis, Robert
<Perlis.Robert@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; O'Donnell, Jessica (ENRD)
<Jessica.O'Donnell@usdoj.gov>; Meghan Greenfield <Meghan.Greenfield@usdoj.gov>

Cc: Grosko, Brett (ENRD) <Brett.Grosko@usdoj.gov>

Subject: FW: 19-70115 National Family Farm Coalition, et al v. USEPA, et al "Order Filed (From Chambers)"

Well, the Court identified the problem about what actions are under review. We have 14 days to respond with a brief addressing the scope of Petitioners' challenge.

Sarah

From: ca9_ecfnoticing@ca9.uscourts.gov <ca9_ecfnoticing@ca9.uscourts.gov>

Sent: Wednesday, April 29, 2020 2:08 PM

To: Buckley, Sarah (ENRD) <SBuckley@ENRD.USDOJ.GOV>

Subject: 19-70115 National Family Farm Coalition, et al v. USEPA, et al "Order Filed (From Chambers)"

*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing.**

United States Court of Appeals for the Ninth Circuit

Notice of Docket Activity

The following transaction was entered on 04/29/2020 at 11:06:35 AM PDT and filed on 04/29/2020

Case Name: National Family Farm Coalition, et al v. USEPA, et al

Case Number: 19-70115

Document(s): Document(s)

Docket Text:

Filed order (MICHAEL DALY HAWKINS, M. MARGARET MCKEOWN and WILLIAM A. FLETCHER): On October 31, 2018, EPA signed a decision announcing that it “will be granting requests by Bayer CropScience (formerly Monsanto Company), Corteva (formerly DuPont), and BASF to amend their existing conditional registrations that contain expiration dates of November 9, 2018, and December 20, 2018, respectively.” ER 3. Pursuant to this decision, EPA issued three conditional registrations. On November 1, 2018, EPA issued a conditional registration to Bayer CropScience for its “M1768 Herbicide” [“XtendiMax With VaporGrip Technology”]. ER 65, 81. On November 2, 2018, EPA issued a conditional registration to BASF for its “Engenia Herbicide.” ER 167. On November 5, 2018, EPA issued a conditional registration to Corteva for its “DuPont FeXapan Herbicide.” ER 121. In a petition to our Court, National Family Farm Coalition et al. challenged the decision of EPA. Petitioners’ brief begins: “This petition seeks review of the October 31, 2018, decision by the United States Environmental Protection Agency (EPA) to continue the new uses registrations of the pesticide dicamba on dicambaresistant cotton and soybean. . . . Petitioners timely filed this petition for review.” Blue Brief at 1. Petitioners write further: “This case concerns a pesticide Intervenor Monsanto developed, ‘XtendiMax with VaporGrip Technology’ (XtendiMax), containing the weed-killing active ingredient dicamba. ER0003–4.” Id. at 2. They append a footnote to this sentence: “The registration also covers the competitor dicamba varieties approved by EPA for the same uses. ER0004–5, tbl.2; ER121–ER 0210. We use XtendiMax for simplicity.” Id. at 2, n.4. EPA writes in its brief: “Although not at issue here, EPA has issued registrations for two other dicamba products for the same uses, Engenia and FeXapan. EPA Reg. Nos. 7969-345 and 352-913. EPA’s 2018 registration action also amended the Engenia and FeXapan registrations.” Red Brief at 12–13, n.3. The parties thus appear to disagree as to the scope of the challenge before us. As we read the petitioners’ brief, they seek to challenge the entirety of the registration decision promulgated by the EPA on October 31, 2018, approving conditional registrations for post-emergent application of dicamba herbicides manufactured by Bayer CropScience, Corteva, and BASF. As we read EPA’s brief, it contends that petitioners’ challenge extends only to the conditional registration for post-emergent

application of the dicamba herbicide manufactured by Bayer CropScience. The briefing now before this Court does little more than to indicate disagreement between the parties. The Court would be assisted by more sustained briefing on the scope of petitioners' challenge. Within fourteen days of the issuance of this order, the parties, including Intervenor Bayer CropScience, are directed to provide simultaneous letter briefs addressing the scope of petitioners' challenge. The briefs are to be no longer than ten pages of text, double-spaced, in size 14 font. [11675470] (AF)

Notice will be electronically mailed to:

Richard P. Bress, Attorney
Sarah A. Buckley, Trial Attorney
Jesse A. Buss
Mr. John Brett Grosko, Trial Attorney
Mr. George Andreas Kimbrell, Attorney
Jon Michael Lipshultz
Ms. Stephanie M. Parent, Attorney
Philip J. Perry, Attorney
Mr. Andrew Prins
Claire Tonry
Ms. Amy Luisa Van Saun, Staff Attorney
Stacey L. VanBelleghem
Ms. Sylvia Shih-Yau Wu, Attorney

Case participants listed below will not receive this electronic notice:

USEPA - Agency Representative
USEPA - U.S. ENVIRONMENTAL PROTECTION AGENCY
1101A
1200 Pennsylvania Ave., NW
Washington, DC 20460

The following document(s) are associated with this transaction:

Document Description: Main Document

Original Filename: 19-70115 NFF order supp briefing FILE.pdf

Electronic Document Stamp:

[STAMP acecfStamp_ID=1106763461 [Date=04/29/2020] [FileNumber=11675470-0]
[1e64957da47a386301b116927feb82229f135e7267b0edfc7b8c4dd444c2732ed06d6a96daafb0b0
0b2b647b9876deeba55340eb8b8e198297f3f506e16428bb]]

Message

From: Knorr, Michele [knorr.michele@epa.gov]
Sent: 5/4/2020 1:40:45 PM
To: O'Donnell, Jessica (ENRD) [Jessica.O'Donnell@usdoj.gov]; Grosko, Brett (ENRD) [Brett.Grosko@usdoj.gov]; Buckley, Sarah (ENRD) [Sarah.Buckley@usdoj.gov]; Garrison, Scott [Garrison.Scott@epa.gov]; Perlis, Robert [Perlis.Robert@epa.gov]; Koch, Erin [Koch.Erin@epa.gov]
Subject: RE: Dicamba supplemental filing discussion

Ex. 5 Attorney Client (AC)

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: O'Donnell, Jessica (ENRD) <Jessica.O'Donnell@usdoj.gov>
Sent: Monday, May 04, 2020 7:48 AM
To: Grosko, Brett (ENRD) <Brett.Grosko@usdoj.gov>; Knorr, Michele <knorr.michele@epa.gov>; Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Perlis, Robert <Perlis.Robert@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>
Subject: RE: Dicamba supplemental filing discussion

EPA folks –

Here is a tentative schedule for review of the supplemental brief:

Tu. 5/5 - draft to EPA
Th. 5/7 - EPA comments back to DOJ
Fr. 5/8 – revised draft to EPA
Tu. 5/12 – EPA comments on revised draft
W. 5/13 – file

Note, I need to run this by our management to make sure everyone is ok with the intervals.
Jessica O'Donnell
Assistant Section Chief
Environmental Defense Section
202.305.0851

From: Grosko, Brett (ENRD) <BGrosko@ENRD.USDOJ.GOV>

Sent: Friday, May 1, 2020 9:11 AM

To: 'Knorr, Michele' <knorr.michele@epa.gov>; O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>; Buckley, Sarah (ENRD) <SBuckley@ENRD.USDOJ.GOV>; Garrison, Scott <Garrison.Scott@epa.gov>; Perlis, Robert <Perlis.Robert@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>

Subject: RE: Dicamba supplemental filing discussion

All:

Let's reconvene on my number:

1-866-410-9426 x 6325101010

Brett

From: Knorr, Michele [<mailto:knorr.michele@epa.gov>]

Sent: Friday, May 1, 2020 9:08 AM

To: O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>; Buckley, Sarah (ENRD) <SBuckley@ENRD.USDOJ.GOV>; Grosko, Brett (ENRD) <BGrosko@ENRD.USDOJ.GOV>; Garrison, Scott <Garrison.Scott@epa.gov>; Perlis, Robert <Perlis.Robert@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>

Subject: RE: Dicamba supplemental filing discussion

Are we on Sarah's number? Maybe she is delayed today. Should we switch to another line?

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: O'Donnell, Jessica (ENRD) <Jessica.O'Donnell@usdoj.gov>

Sent: Friday, May 01, 2020 9:06 AM

To: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>; Grosko, Brett (ENRD) <Brett.Grosko@usdoj.gov>; Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Perlis, Robert <Perlis.Robert@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>

Subject: RE: Dicamba supplemental filing discussion

I'm on hold now in case anyone is waiting for me. Sorry for the delay.

Jessica O'Donnell
Assistant Section Chief
Environmental Defense Section
202.305.0851

-----Original Appointment-----

From: Buckley, Sarah (ENRD) <SBuckley@ENRD.USDOJ.GOV>

Sent: Thursday, April 30, 2020 10:32 AM

To: Buckley, Sarah (ENRD); O'Donnell, Jessica (ENRD); Grosko, Brett (ENRD); Knorr, Michele; Garrison, Scott; Perlis, Robert; Koch, Erin

Subject: Dicamba supplemental filing discussion

When: Friday, May 1, 2020 9:00 AM-9:30 AM (UTC-05:00) Eastern Time (US & Canada).

Where: 866-410-9426, 1711883#

Message

From: Buckley, Sarah (ENRD) [Sarah.Buckley@usdoj.gov]
Sent: 4/29/2020 8:08:06 PM
To: Knorr, Michele [knorr.michele@epa.gov]; Garrison, Scott [Garrison.Scott@epa.gov]; Perlis, Robert [Perlis.Robert@epa.gov]; Koch, Erin [Koch.Erin@epa.gov]; O'Donnell, Jessica (ENRD) [Jessica.O'Donnell@usdoj.gov]; Meghan Greenfield [Meghan.Greenfield@usdoj.gov]
CC: Grosko, Brett (ENRD) [Brett.Grosko@usdoj.gov]
Subject: RE: 19-70115 National Family Farm Coalition, et al v. USEPA, et al "Order Filed (From Chambers)"

Jessica is going to take the lead on drafting our response because I'm fully booked for the next two weeks. For my part, I would be available for a call tomorrow or Friday between 9 and 12.

Ex. 5 AC/AWP/DP

Thanks,
Sarah

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Wednesday, April 29, 2020 2:18 PM
To: Buckley, Sarah (ENRD) <SBuckley@ENRD.USDOJ.GOV>; Garrison, Scott <Garrison.Scott@epa.gov>; Perlis, Robert <Perlis.Robert@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>; Greenfield, Meghan (ENRD) <MGreenfiel@ENRD.USDOJ.GOV>
Cc: Grosko, Brett (ENRD) <BGrosko@ENRD.USDOJ.GOV>
Subject: RE: 19-70115 National Family Farm Coalition, et al v. USEPA, et al "Order Filed (From Chambers)"

Should we get a call on the books? We can pull together our thoughts relatively quickly for a discussion. Let us know how you would like to proceed.

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Sent: Wednesday, April 29, 2020 2:13 PM
To: Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Perlis, Robert <Perlis.Robert@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; O'Donnell, Jessica (ENRD) <Jessica.O'Donnell@usdoj.gov>; Meghan Greenfield <Meghan.Greenfield@usdoj.gov>
Cc: Grosko, Brett (ENRD) <Brett.Grosko@usdoj.gov>
Subject: FW: 19-70115 National Family Farm Coalition, et al v. USEPA, et al "Order Filed (From Chambers)"

Well, the Court identified the problem about what actions are under review. We have 14 days to respond with a brief addressing the scope of Petitioners' challenge.

Sarah

From: ca9_ecfnoticing@ca9.uscourts.gov <ca9_ecfnoticing@ca9.uscourts.gov>

Sent: Wednesday, April 29, 2020 2:08 PM

To: Buckley, Sarah (ENRD) <SBuckley@ENRD.USDOJ.GOV>

Subject: 19-70115 National Family Farm Coalition, et al v. USEPA, et al "Order Filed (From Chambers)"

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing.

United States Court of Appeals for the Ninth Circuit

Notice of Docket Activity

The following transaction was entered on 04/29/2020 at 11:06:35 AM PDT and filed on 04/29/2020

Case Name: National Family Farm Coalition, et al v. USEPA, et al

Case Number: 19-70115

Document(s): Document(s)

Docket Text:

Filed order (MICHAEL DALY HAWKINS, M. MARGARET MCKEOWN and WILLIAM A. FLETCHER): On October 31, 2018, EPA signed a decision announcing that it “will be granting requests by Bayer CropScience (formerly Monsanto Company), Corteva (formerly DuPont), and BASF to amend their existing conditional registrations that contain expiration dates of November 9, 2018, and December 20, 2018, respectively.” ER 3. Pursuant to this decision, EPA issued three conditional registrations. On November 1, 2018, EPA issued a conditional registration to Bayer CropScience for its “M1768 Herbicide” [“XtendiMax With VaporGrip Technology”]. ER 65, 81. On November 2, 2018, EPA issued a conditional registration to BASF for its “Engenia Herbicide.” ER 167. On November 5, 2018, EPA issued a conditional registration to Corteva for its “DuPont FeXapan Herbicide.” ER 121. In a petition to our Court, National Family Farm Coalition et al. challenged the decision of EPA. Petitioners’ brief begins: “This petition seeks review of the October 31, 2018, decision by the United States Environmental Protection Agency (EPA) to continue the new uses registrations of the pesticide dicamba on dicamba-resistant cotton and soybean. . . . Petitioners timely filed this petition for review.” Blue Brief at 1. Petitioners write further: “This case concerns a pesticide Intervenor Monsanto developed, ‘XtendiMax with VaporGrip Technology’ (XtendiMax), containing the weed-killing active ingredient dicamba. ER0003–4.” Id. at 2. They append a footnote to this sentence: “The registration also covers the competitor dicamba varieties approved by EPA for the same uses. ER0004–5, tbl.2; ER121–ER 0210. We use XtendiMax for simplicity.” Id. at 2, n.4. EPA writes in its brief: “Although not at issue here, EPA has issued registrations for two other dicamba products for the same uses, Engenia and FeXapan. EPA Reg. Nos. 7969-345 and 352-913. EPA’s 2018 registration action also amended the Engenia and FeXapan registrations.” Red Brief at 12–13, n.3. The parties thus appear to disagree as to the scope of the challenge before us. As we read the petitioners’ brief, they seek to challenge the entirety of the registration decision promulgated by the EPA on October 31, 2018, approving conditional registrations for post-emergent application of dicamba herbicides manufactured by Bayer CropScience, Corteva, and BASF. As we read EPA’s brief, it contends that petitioners’ challenge extends only to the conditional registration for post-emergent application of

the dicamba herbicide manufactured by Bayer CropScience. The briefing now before this Court does little more than to indicate disagreement between the parties. The Court would be assisted by more sustained briefing on the scope of petitioners' challenge. Within fourteen days of the issuance of this order, the parties, including Intervenor Bayer CropScience, are directed to provide simultaneous letter briefs addressing the scope of petitioners' challenge. The briefs are to be no longer than ten pages of text, double-spaced, in size 14 font. [11675470] (AF)

Notice will be electronically mailed to:

Richard P. Bress, Attorney
Sarah A. Buckley, Trial Attorney
Jesse A. Buss
Mr. John Brett Grosko, Trial Attorney
Mr. George Andreas Kimbrell, Attorney
Jon Michael Lipshultz
Ms. Stephanie M. Parent, Attorney
Philip J. Perry, Attorney
Mr. Andrew Prins
Claire Tonry
Ms. Amy Luisa Van Saun, Staff Attorney
Stacey L. VanBelleghem
Ms. Sylvia Shih-Yau Wu, Attorney

Case participants listed below will not receive this electronic notice:

USEPA - Agency Representative
USEPA - U.S. ENVIRONMENTAL PROTECTION AGENCY
1101A
1200 Pennsylvania Ave., NW
Washington, DC 20460

The following document(s) are associated with this transaction:

Document Description: Main Document

Original Filename: 19-70115 NFF order supp briefing FILE.pdf

Electronic Document Stamp:

[STAMP acecfStamp_ID=1106763461 [Date=04/29/2020] [FileNumber=11675470-0]

[1e64957da47a386301b116927feb82229f135e7267b0edfc7b8c4dd444c2732ed06d6a96daafb0b00b2b647b9876
deeba55340eb8b8e198297f3f506e16428bb]]

Message

From: Koch, Erin [Koch.Erin@epa.gov]
Sent: 5/4/2020 11:38:41 AM
To: Knorr, Michele [knorr.michele@epa.gov]; Garrison, Scott [Garrison.Scott@epa.gov]
Subject: RE: Language re formulators

I don't have any more suggestions.

Erin

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Friday, May 01, 2020 1:18 PM
To: Garrison, Scott <Garrison.Scott@epa.gov>
Cc: Koch, Erin <Koch.Erin@epa.gov>
Subject: RE: Language re formulators

I'm good with your edits. I know that Erin is swamped with other matters, so do you want to send it to DOJ noting that Erin may have more edits? Also, I've been having issues sending Jessica emails. I use this email and ask for confirmation. jessica.o'donnell@usdoj.gov

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Garrison, Scott <Garrison.Scott@epa.gov>
Sent: Friday, May 01, 2020 1:14 PM
To: Knorr, Michele <knorr.michele@epa.gov>
Cc: Koch, Erin <Koch.Erin@epa.gov>
Subject: RE: Language re formulators

Confidential communication for internal deliberations only. Attorney-client privilege. Do not distribute outside EPA.

Ex. 5 Attorney Client (AC)

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Friday, May 01, 2020 12:59 PM

To: Garrison, Scott <Garrison.Scott@epa.gov>

Cc: Koch, Erin <Koch.Erin@epa.gov>

Subject: RE: Language re formulators

Minor edits below to be a little less specific.

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Garrison, Scott <Garrison.Scott@epa.gov>

Sent: Friday, May 01, 2020 11:54 AM

To: Knorr, Michele <knorr.michele@epa.gov>

Cc: Koch, Erin <Koch.Erin@epa.gov>

Subject: Language re formulators

Confidential communication for internal deliberations only. Attorney-client privilege. Do not distribute outside EPA.

Does this accomplish what you wanted?

Ex. 5 Attorney Client (AC)

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

Message

From: Cole, Joseph E. [cole.josephe@epa.gov]
Sent: 4/29/2020 7:13:11 PM
To: Koch, Erin [Koch.Erin@epa.gov]
CC: Knorr, Michele [knorr.michele@epa.gov]; Garrison, Scott [Garrison.Scott@epa.gov]; Perlis, Robert [Perlis.Robert@epa.gov]
Subject: RE: 19-70115 National Family Farm Coalition, et al v. USEPA, et al "Order Filed (From Chambers)"

I don't think that meets the "New Decision Summaries" criteria to me; let's just send Kamila a direct email. Thanks.

Joe

From: Koch, Erin <Koch.Erin@epa.gov>
Sent: Wednesday, April 29, 2020 2:35 PM
To: Cole, Joseph E. <cole.josephe@epa.gov>
Cc: Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Perlis, Robert <Perlis.Robert@epa.gov>
Subject: FW: 19-70115 National Family Farm Coalition, et al v. USEPA, et al "Order Filed (From Chambers)"

Joe,

In the dicamba case, the court is seeking additional briefing on which orders are at issue. Is an order from the court like this something that triggers notification through the IO procedures, or can we just alert Kamila at reg review next week or earlier by direct email? And if it needs to go through the procedures, does Matt's recusal make a difference as to whom to send it to?

Thanks,
Erin

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Wednesday, April 29, 2020 2:18 PM
To: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Perlis, Robert <Perlis.Robert@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; O'Donnell, Jessica (ENRD) <Jessica.O'Donnell@usdoj.gov>; Meghan Greenfield <Meghan.Greenfield@usdoj.gov>
Cc: Grosko, Brett (ENRD) <Brett.Grosko@usdoj.gov>
Subject: RE: 19-70115 National Family Farm Coalition, et al v. USEPA, et al "Order Filed (From Chambers)"

Should we get a call on the books? We can pull together our thoughts relatively quickly for a discussion. Let us know how you would like to proceed.

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Sent: Wednesday, April 29, 2020 2:13 PM
To: Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Perlis, Robert <Perlis.Robert@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; O'Donnell, Jessica (ENRD) <Jessica.O'Donnell@usdoj.gov>;

Meghan Greenfield <Meghan.Greenfield@usdoj.gov>

Cc: Grosko, Brett (ENRD) <Brett.Grosko@usdoj.gov>

Subject: FW: 19-70115 National Family Farm Coalition, et al v. USEPA, et al "Order Filed (From Chambers)"

Well, the Court identified the problem about what actions are under review. We have 14 days to respond with a brief addressing the scope of Petitioners' challenge.

Sarah

From: ca9_ecfnoticing@ca9.uscourts.gov <ca9_ecfnoticing@ca9.uscourts.gov>

Sent: Wednesday, April 29, 2020 2:08 PM

To: Buckley, Sarah (ENRD) <SBuckley@ENRD.USDOJ.GOV>

Subject: 19-70115 National Family Farm Coalition, et al v. USEPA, et al "Order Filed (From Chambers)"

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing.

United States Court of Appeals for the Ninth Circuit

Notice of Docket Activity

The following transaction was entered on 04/29/2020 at 11:06:35 AM PDT and filed on 04/29/2020

Case Name: National Family Farm Coalition, et al v. USEPA, et al

Case Number: 19-70115

Document(s): Document(s)

Docket Text:

Filed order (MICHAEL DALY HAWKINS, M. MARGARET MCKEOWN and WILLIAM A. FLETCHER): On October 31, 2018, EPA signed a decision announcing that it “will be granting requests by Bayer CropScience (formerly Monsanto Company), Corteva (formerly DuPont), and BASF to amend their existing conditional registrations that contain expiration dates of November 9, 2018, and December 20, 2018, respectively.” ER 3. Pursuant to this decision, EPA issued three conditional registrations. On November 1, 2018, EPA issued a conditional registration to Bayer CropScience for its “M1768 Herbicide” [“XtendiMax With VaporGrip Technology”]. ER 65, 81. On November 2, 2018, EPA issued a conditional registration to BASF for its “Engenia Herbicide.” ER 167. On November 5, 2018, EPA issued a conditional registration to Corteva for its “DuPont FeXapan Herbicide.” ER 121. In a petition to our Court, National Family Farm Coalition et al. challenged the decision of EPA. Petitioners’ brief begins: “This petition seeks review of the October 31, 2018, decision by the United States Environmental Protection Agency (EPA) to continue the new uses registrations of the pesticide dicamba on dicambaresistant cotton and soybean. . . . Petitioners timely filed this petition for review.” Blue Brief at 1. Petitioners write further: “This case concerns a pesticide Intervenor Monsanto developed, ‘XtendiMax with VaporGrip Technology’ (XtendiMax), containing the weed-killing active ingredient dicamba. ER0003–4.” Id. at 2. They append a footnote to this sentence: “The registration also covers the competitor dicamba varieties approved by EPA for the same uses. ER0004–5, tbl.2; ER121–ER 0210. We use XtendiMax for simplicity.” Id. at 2, n.4. EPA writes in its brief: “Although not at issue here, EPA

has issued registrations for two other dicamba products for the same uses, Engenia and FeXapan. EPA Reg. Nos. 7969-345 and 352-913. EPA's 2018 registration action also amended the Engenia and FeXapan registrations." Red Brief at 12-13, n.3. The parties thus appear to disagree as to the scope of the challenge before us. As we read the petitioners' brief, they seek to challenge the entirety of the registration decision promulgated by the EPA on October 31, 2018, approving conditional registrations for post-emergent application of dicamba herbicides manufactured by Bayer CropScience, Corteva, and BASF. As we read EPA's brief, it contends that petitioners' challenge extends only to the conditional registration for post-emergent application of the dicamba herbicide manufactured by Bayer CropScience. The briefing now before this Court does little more than to indicate disagreement between the parties. The Court would be assisted by more sustained briefing on the scope of petitioners' challenge. Within fourteen days of the issuance of this order, the parties, including Intervenor Bayer CropScience, are directed to provide simultaneous letter briefs addressing the scope of petitioners' challenge. The briefs are to be no longer than ten pages of text, double-spaced, in size 14 font. [11675470] (AF)

Notice will be electronically mailed to:

Richard P. Bress, Attorney
Sarah A. Buckley, Trial Attorney
Jesse A. Buss
Mr. John Brett Grosko, Trial Attorney
Mr. George Andreas Kimbrell, Attorney
Jon Michael Lipshultz
Ms. Stephanie M. Parent, Attorney
Philip J. Perry, Attorney
Mr. Andrew Prins
Claire Tonry
Ms. Amy Luisa Van Saun, Staff Attorney
Stacey L. VanBelleghem
Ms. Sylvia Shih-Yau Wu, Attorney

Case participants listed below will not receive this electronic notice:

USEPA - Agency Representative
USEPA - U.S. ENVIRONMENTAL PROTECTION AGENCY
1101A
1200 Pennsylvania Ave., NW
Washington, DC 20460

The following document(s) are associated with this transaction:

Document Description: Main Document

Original Filename: 19-70115 NFF order supp briefing FILE.pdf

Electronic Document Stamp:

[STAMP acecfStamp_ID=1106763461 [Date=04/29/2020] [FileNumber=11675470-0]
[1e64957da47a386301b116927feb82229f135e7267b0edfc7b8c4dd444c2732ed06d6a96daafb0b00b2b647b9876
deeba55340eb8b8e198297f3f506e16428bb]]

Message

From: O'Donnell, Jessica (ENRD) [Jessica.O'Donnell@usdoj.gov]
Sent: 5/12/2020 10:35:10 AM
To: Knorr, Michele [knorr.michele@epa.gov]; Grosko, Brett (ENRD) [Brett.Grosko@usdoj.gov]
CC: Garrison, Scott [Garrison.Scott@epa.gov]; Buckley, Sarah (ENRD) [Sarah.Buckley@usdoj.gov]
Subject: RE: Our edits/comments on the dicamba brief
Attachments: ENV_DEFENSE-#918333-v2-Dicamba_II_Revised_Draft_Supplemental_Brief_clean_version.DOCX

Michele –

Thank you for getting me your final comments early! The attached is the draft I sent my front office yesterday afternoon. I was not able to incorporate all of the new text due to the 10-page limit, but I think this draft captures the essential substance of most of the edits in one way or another.

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

I still need a few cites. Can you provide me with the following:

The proposed Ex. A – the bridging memo. Is this document cited on EPA's website or regulations.gov? Also please confirm there are not confidentiality issues with attaching this document.

On p. 10 – a statutory or regulatory cite for the sentence explaining that parties can seek cancellation or suspension of the pesticides.

Let me know if you have any other questions or want to discuss anything.

Thanks,

Jessica

Jessica O'Donnell

Assistant Section Chief

Environmental Defense Section

202.305.0851

From: Knorr, Michele <knorr.michele@epa.gov>

Sent: Monday, May 11, 2020 12:31 PM

To: O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>; Grosko, Brett (ENRD) <BGrosko@ENRD.USDOJ.GOV>

Cc: Garrison, Scott <Garrison.Scott@epa.gov>

Subject: Our edits/comments on the dicamba brief

We are early again with our comments – yay! This includes all OGC comments. Let us know if we should discuss any of these. Also, can you update us on whether there will be a call with Bayer counsel about what they intend to focus on in their brief? Thanks again for all the hard work on this.

Michele L. Knorr, Attorney

Pesticides and Toxic Substances Law Office

Office of General Counsel
202-564-5631

Message

From: Knorr, Michele [knorr.michele@epa.gov]
Sent: 4/17/2020 9:50:26 PM
To: Buckley, Sarah (ENRD) [Sarah.Buckley@usdoj.gov]; Garrison, Scott [Garrison.Scott@epa.gov]; Koch, Erin [Koch.Erin@epa.gov]; Perlis, Robert [Perlis.Robert@epa.gov]
CC: Grosko, Brett (ENRD) [Brett.Grosko@usdoj.gov]
Subject: RE: Dicamba - the other registrations

Ex. 5 AC/AWP/DP

I think I've said my peace on this. Happy to discuss how best to deal with an answer for the oral argument. Thanks

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Sent: Friday, April 17, 2020 4:17 PM
To: Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Perlis, Robert <Perlis.Robert@epa.gov>
Cc: Grosko, Brett (ENRD) <Brett.Grosko@usdoj.gov>
Subject: Dicamba - the other registrations

Hi all,

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Thanks,
Sarah

Sarah A. Buckley

Trial Attorney

U.S. Department of Justice

Environment & Natural Resources Division

Environmental Defense Section

4 Constitution Square

150 M Street, NE

Room 4.1126

Washington, DC 20002

sarah.buckley@usdoj.gov

Ph: (202) 616-7554

Message

From: Knorr, Michele [knorr.michele@epa.gov]
Sent: 4/17/2020 5:13:21 PM
To: Grosko, Brett (ENRD) [Brett.Grosko@usdoj.gov]; Buckley, Sarah (ENRD) [Sarah.Buckley@usdoj.gov]
CC: Perlis, Robert [Perlis.Robert@epa.gov]; Garrison, Scott [Garrison.Scott@epa.gov]; Koch, Erin [Koch.Erin@epa.gov]
Subject: RE: Dicamba - enforcement/federalism question

I don't think this has been answered yet, so I will work with folks on this.

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Grosko, Brett (ENRD) <Brett.Grosko@usdoj.gov>
Sent: Friday, April 17, 2020 11:50 AM
To: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Cc: Perlis, Robert <Perlis.Robert@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>
Subject: Re: Dicamba - enforcement/federalism question

Ex. 5 AC/AWP/DP

On Apr 17, 2020, at 11:46 AM, Buckley, Sarah (ENRD) <SBuckley@enrd.usdoj.gov> wrote:

Ex. 5 AC/AWP/DP

From: Perlis, Robert <Perlis.Robert@epa.gov>
Sent: Friday, April 17, 2020 11:40 AM
To: Knorr, Michele <knorr.michele@epa.gov>; Buckley, Sarah (ENRD) <SBuckley@ENRD.USDOJ.GOV>; Garrison, Scott <Garrison.Scott@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>
Cc: Grosko, Brett (ENRD) <BGrosko@ENRD.USDOJ.GOV>
Subject: RE: Dicamba - enforcement/federalism question

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Bob Perlis
Pesticides and Toxic Substances Law Office
Office of General Counsel
US EPA
(202) 564-5636

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Friday, April 17, 2020 11:03 AM
To: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Perlis, Robert <Perlis.Robert@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>
Cc: Grosko, Brett (ENRD) <Brett.Grosko@usdoj.gov>
Subject: RE: Dicamba - enforcement/federalism question

Folks – I am reviewing the supplemental ER from the petitioners. I think they may added some documents that refer to the issue for #3.

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

EPAers

– want to add more to this?

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Sent: Friday, April 17, 2020 10:47 AM
To: Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Perlis, Robert <Perlis.Robert@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>
Cc: Grosko, Brett (ENRD) <Brett.Grosko@usdoj.gov>
Subject: Dicamba - enforcement/federalism question

Hi there,

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Thanks,
Sarah

Sarah A. Buckley

Trial Attorney

U.S. Department of Justice

Environment & Natural Resources Division

Environmental Defense Section

4 Constitution Square

150 M Street, NE

Room 4.1126

Washington, DC 20002

sarah.buckley@usdoj.gov

Ph: (202) 616-7554

Message

From: Perlis, Robert [Perlis.Robert@epa.gov]
Sent: 4/17/2020 4:01:17 PM
To: Buckley, Sarah (ENRD) [Sarah.Buckley@usdoj.gov]; Knorr, Michele [knorr.michele@epa.gov]; Garrison, Scott [Garrison.Scott@epa.gov]; Koch, Erin [Koch.Erin@epa.gov]
CC: Grosko, Brett (ENRD) [Brett.Grosko@usdoj.gov]
Subject: RE: Dicamba - enforcement/federalism question

Ex. 5 AC/AWP/DP

Bob Perlis
Pesticides and Toxic Substances Law Office
Office of General Counsel
US EPA
(202) 564-5636

From: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Sent: Friday, April 17, 2020 11:49 AM
To: Perlis, Robert <Perlis.Robert@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>
Cc: Grosko, Brett (ENRD) <Brett.Grosko@usdoj.gov>
Subject: RE: Dicamba - enforcement/federalism question

EVERY. TIME. Sorry guys... I use a "quick key" in Word to do a section symbol and when I use it in email it just sends.

Ex. 5 AC/AWP/DP

From: Buckley, Sarah (ENRD)
Sent: Friday, April 17, 2020 11:47 AM
To: Perlis, Robert <Perlis.Robert@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>
Cc: Grosko, Brett (ENRD) <BGrosko@ENRD.USDOJ.GOV>
Subject: RE: Dicamba - enforcement/federalism question

Ex. 5 AC/AWP/DP

From: Perlis, Robert <Perlis.Robert@epa.gov>

Sent: Friday, April 17, 2020 11:40 AM

To: Knorr, Michele <knorr.michele@epa.gov>; Buckley, Sarah (ENRD) <SBuckley@ENRD.USDOJ.GOV>; Garrison, Scott <Garrison.Scott@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>

Cc: Grosko, Brett (ENRD) <BGrosko@ENRD.USDOJ.GOV>

Subject: RE: Dicamba - enforcement/federalism question

Ex. 5 AC/AWP/DP

Bob Perlis

Pesticides and Toxic Substances Law Office

Office of General Counsel

US EPA

(202) 564-5636

From: Knorr, Michele <knorr.michele@epa.gov>

Sent: Friday, April 17, 2020 11:03 AM

To: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Perlis, Robert <Perlis.Robert@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>

Cc: Grosko, Brett (ENRD) <Brett.Grosko@usdoj.gov>

Subject: RE: Dicamba - enforcement/federalism question

Folks – I am reviewing the supplemental ER from the petitioners. I think they may added some documents that refer to the issue for #3.

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

EPAers – want to add more to this?

Michele L. Knorr, Attorney

Pesticides and Toxic Substances Law Office

Office of General Counsel

202-564-5631

From: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>

Sent: Friday, April 17, 2020 10:47 AM

To: Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Perlis, Robert

<Perlis.Robert@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>

Cc: Grosko, Brett (ENRD) <Brett.Grosko@usdoj.gov>

Subject: Dicamba - enforcement/federalism question

Hi there,

Ex. 5 AC/AWP/DP

Thanks,
Sarah

Sarah A. Buckley

Trial Attorney

U.S. Department of Justice

Environment & Natural Resources Division

Environmental Defense Section

4 Constitution Square

150 M Street, NE

Room 4.1126

Washington, DC 20002

sarah.buckley@usdoj.gov

Ph: (202) 616-7554

Message

From: Cole, Joseph E. [cole.josephe@epa.gov]
Sent: 10/23/2020 6:07:10 PM
To: Lis-Coghlan, Kamila [lis-coghlan.kamila@epa.gov]
CC: Koch, Erin [Koch.Erin@epa.gov]; Knorr, Michele [knorr.michele@epa.gov]; Garrison, Scott [Garrison.Scott@epa.gov]; Goerke, Ariadne [Goerke.Ariadne@epa.gov]
Subject: FW: AEZ & Dicamba Press Releases

FYI

From: Dennis, Allison <Dennis.Allison@epa.gov>
Sent: Friday, October 23, 2020 1:31 PM
To: Cole, Joseph E. <cole.josephe@epa.gov>
Subject: FW: AEZ & Dicamba Press Releases

Latest versions of the press materials below.

I know OGC staff (michelle know, Scott G) were involved in the review of these materials.

The Q&As, TPs, etc, for both announcements can be found here: https://usepa-my.sharepoint.com/:f/g/personal/siedschlag_gregory_epa_gov/EvuigEaSfqNMINzGGHJ5WaABGyjSkOndEXsM_mZrfuFIrg?e=fekIJV

From: Dunn, Alexandra <dunn.alexandra@epa.gov>
Sent: Friday, October 23, 2020 1:24 PM
To: Dennis, Allison <Dennis.Allison@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Striegel, Megan <Striegel.Megan@epa.gov>; Block, Molly <block.molly@epa.gov>
Subject: RE: AEZ & Dicamba Press Releases

Looks oK.

Alexandra Dapolito Dunn, Esq.
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
US Environmental Protection Agency
Washington, DC

From: Dennis, Allison <Dennis.Allison@epa.gov>
Sent: Friday, October 23, 2020 12:52 PM
To: Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Striegel, Megan <Striegel.Megan@epa.gov>; Block, Molly <block.molly@epa.gov>
Cc: Dunn, Alexandra <dunn.alexandra@epa.gov>
Subject: RE: AEZ & Dicamba Press Releases

+ Alex

From: Drinkard, Andrea <Drinkard.Andrea@epa.gov>
Sent: Friday, October 23, 2020 12:52 PM

To: Dennis, Allison <Dennis.Allison@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Striegel, Megan <Striegel.Megan@epa.gov>; Block, Molly <block.molly@epa.gov>
Subject: AEZ & Dicamba Press Releases

Here's what I'll be submitting to Mandy/Michael later today. These versions include approved quotes from Bill. Please let me know ASAP if you have any last minute edits.

EPA Announces 2020 Dicamba Registration Decision

XXX—At an event in X, U.S. Environmental Protection Agency (EPA) Administrator Andrew Wheeler announced the next step for dicamba registration. EPA is approving new registrations for two dicamba products and extending the registration of an additional dicamba product. All three registrations include stringent control measures to protect the environment, including non-target plants, animals, and other crops not tolerant to dicamba.

“With today’s decision, farmers now have the certainty they need to make plans for their 2021 growing season,” **said EPA Administrator Andrew Wheeler.** “After reviewing substantial amounts of new information, conducting scientific assessments based on the best available science, and carefully considering input from stakeholders we have reached a resolution that’s good for our farmers, our economy, and our environment.”

Through today’s action, EPA approved new registrations for two “over the top” (OTT) dicamba products—XtendiMax with VaporGrip Technology and Engenia Herbicide— and extended the registration for an additional OTT dicamba product, Tavium plus VaporGrip Technology. These registrations are only for use on dicamba-tolerant (DT) cotton and DT soybeans and will expire in 2025, providing certainty to American agriculture for the upcoming growing season and beyond.

To manage off-site movement of dicamba, EPA’s 2020 registration features important control measures, including:

- Requiring an approved pH-buffering agent (also called a Volatility Reduction Agent or VRA) be tank mixed with over-the-top dicamba products prior to all applications to control volatility;
- More than doubling the size of required downwind buffers compared to the 2018 OTT dicamba labels; in counties where endangered species may exist, the required buffers are even bigger;
- Prohibiting OTT application of dicamba on soybeans after June 30 and cotton after July 30;
- Simplifying the label and use directions so that growers can more easily determine when and how to properly apply dicamba; and

Ex. 5 Deliberative Process (DP)

The 2020 registration labels also provide new flexibilities for growers and states. For example, there are opportunities for growers to reduce the downwind spray buffer for soybeans through use of certain approved hooded sprayers as an alternative control method. EPA also recognizes and supports the important authority FIFRA section 24 gives the states for issuing locally appropriate regulations for pesticide use. If a state wishes to expand the federal OTT uses of dicamba to better meet special local needs, the Agency will work with them to support their goals.

This action was informed by input from state regulators, grower groups, academic researchers, pesticide manufacturers, and others. EPA reviewed substantial amounts of new information and conducted scientific assessments based on the best available science, including making an Effect Determination under the Endangered Species Act (ESA). With this information and input, EPA has concluded that these registration actions meet Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) registration standards. EPA believes that these new analyses address the concerns expressed in regard to EPA’s 2018 dicamba registrations in the

June 2020 U.S. Court of Appeals for the Ninth Circuit. After completing its Effects Determinations for dicamba uses on DT cotton and soybeans, EPA concluded that with the control measures now required on labels, these actions do not affect endangered or threatened species.

Ex. 5 AC/DP

To view the final registration of the dicamba products, visit docket EPA-HQ-OPP-2020-0492 at [regulations.gov](https://www.regulations.gov).

Background

The United States is the world's leading soybean producer and second leading soybean exporter and also serves as the world's third-largest cotton producer and the leading cotton exporter. Today, there are limited cost-effective options to control herbicide-resistant weeds affecting these commodities. In 2018, approximately 41 percent of U.S. soybean acreage was planted with dicamba-tolerant (DT) seed and almost 70 percent of U.S. cotton acreage was planted with DT seed in 2019. Relative to alternative herbicide programs, postemergence dicamba may reduce weed control costs for some growers, possibly by as much as \$10 per acre, or over five percent of net operating revenue, not accounting for all measures growers will have to take to control off-field movement of dicamba.

Following reports of damage resulting from the off-site movement of dicamba, EPA amended the dicamba registration labels in 2017 and in 2018. In June 2020, the U.S. Court of Appeals for the Ninth Circuit vacated the registrations for three dicamba products: XtendiMax with VaporGrip Technology, Engenia Herbicide, and DuPont FeXapan Herbicide. As a result of the Court's decision, EPA issued cancellation orders outlining limited circumstances under which existing stocks of the three affected products could be distributed and used until July 31, 2020.

EPA Finalizes Improvements to Pesticide Application Exclusion Zone Requirements

Final rule clarifies and simplifies application exclusion zone requirements while maintaining important worker protections

XXX— Today, at an event in X, U.S. Environmental Protection Agency (EPA) Administrator Andrew Wheeler will be announcing that the agency has finalized important improvements to requirements for the pesticide application exclusion zone (AEZ) – the area surrounding pesticide application equipment that exists only during outdoor production pesticide applications. EPA's targeted changes improve the enforceability and workability of the AEZ requirements, decrease regulatory burdens for farmers, and maintain critical worker protections. Today's revisions are consistent with the 2018 Pesticide Registration Improvement Act (PRIA). The AEZ requirements are part of EPA's agricultural Worker Protection Standard (WPS) regulations.

"Since day one, the Trump Administration has been committed to protecting our farmworkers and Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Andrew Wheeler. "The changes to the AEZ requirements make it easier to ensure people near our nation's farms are protected while giving farm owners and their families greater flexibility."

This final action balances the input EPA received from a wide range of stakeholders during the proposed action's 90-day comment period. EPA has clarified and simplified the AEZ requirements based in part on input from state pesticide regulatory agencies and agricultural stakeholders after the adoption of the 2015 WPS rule. Consistent with PRIA, EPA is only implementing changes related to the AEZ requirements in the WPS. These targeted changes include:

- AEZ requirements only apply within the boundaries of the agricultural establishment, removing off-farm responsibilities that were difficult for state regulators to enforce.
- Immediate family members of farm owners are now exempted from all aspects of the AEZ requirements. Farm owners and their immediate family are now able to shelter in place inside closed buildings, giving farm owners and immediate family members flexibility to decide whether to stay on-site during pesticide applications, rather than compelling them to leave even when they feel safe remaining.
- New clarifying language has been added so that pesticide applications that are suspended due to individuals entering an AEZ may be resumed after those individuals have left the AEZ.
- Simplified the criteria to determine whether pesticide applications are subject to the 25- or 100-foot AEZ.

No changes were made to the “Do Not Contact” provision that prohibits a handler/applicator and the handler’s employer from applying a pesticide in such a way that it contacts workers or other persons directly or through drift.

To read the rule in full, please visit: [*insert link*](#)

Background

The original WPS regulation was enacted in 1992 under EPA’s Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorities to protect farm workers from pesticide exposures in production agriculture. The WPS requires owners and employers on agricultural establishments and commercial pesticide-handling establishments to protect employees on farms, forests, nurseries and greenhouses from occupational exposure to agricultural pesticides.

In 2015, EPA finalized various significant revisions to the 1992 WPS. Among the 2015 revisions was a new provision requiring agricultural employers to keep non-applicator workers and all other individuals out of an area called the “application exclusion zone” (AEZ) during outdoor pesticide applications. The AEZ is the area surrounding pesticide application equipment that exists only during outdoor production pesticide applications. The AEZ will remain 25-feet in all directions for ground pesticide applications, and 100-feet in all directions for outdoor aerial, air blast, air-propelled, fumigant, smoke, mist and fog pesticide applications.

The initial intent of the AEZ was to supplement existing WPS provisions for farm workers to better protect them and other on-farm persons that could be contacted by pesticides. However, state regulators expressed concerns with enforcing the complex AEZ requirements, farm owners expressed concerns with applying and enforcing pesticide regulations on their own property, and members of EPA’s Pesticide Program Dialogue Committee expressed numerous other concerns.

Andrea Drinkard
Senior Advisor
EPA Office of Public Affairs
Desk: 202.564.1601
Cell: 202.236.7765

Message

From: Crawford, Lydia [Crawford.Lydia@epa.gov]
Sent: 10/23/2020 4:22:52 PM
To: Hathaway, Margaret [Hathaway.Margaret@epa.gov]
CC: Garrison, Scott [Garrison.Scott@epa.gov]; Kenny, Daniel [Kenny.Dan@epa.gov]; Knorr, Michele [knorr.michele@epa.gov]
Subject: RE: labels for secondary review

Thank you Meg!

From: Hathaway, Margaret <Hathaway.Margaret@epa.gov>
Sent: Friday, October 23, 2020 12:20 PM
To: Crawford, Lydia <Crawford.Lydia@epa.gov>
Cc: Garrison, Scott <Garrison.Scott@epa.gov>; Kenny, Daniel <Kenny.Dan@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>
Subject: RE: labels for secondary review

Lydia: Here is the Syngenta label with my response to Michele's comments.

Ex. 5 Deliberative Process (DP)

- Meg

From: Hathaway, Margaret
Sent: Friday, October 23, 2020 10:54 AM
To: Knorr, Michele <Knorr.Michele@epa.gov>
Cc: Crawford, Lydia <Crawford.Lydia@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Kenny, Daniel <Kenny.Dan@epa.gov>
Subject: FW: labels for secondary review

Thanks Michele:

I'll take a look at this now and see if I can reply to any of the comments before Lydia works to integrate everyone's feedback look.

- Meg

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Friday, October 23, 2020 10:47 AM
To: Hathaway, Margaret <Hathaway.Margaret@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Subject: RE: labels for secondary review

Here is the syngenta one. I have comments on this. I know it may be too late, but I would like RD to look at the comments on this one. The endangered species area needs to be revised – I know Lydia has a comment there as well.

I have an 11 meeting, so it is unlikely I can complete another review.

Michele L. Knorr, Attorney

From: Hathaway, Margaret <Hathaway.Margaret@epa.gov>
Sent: Friday, October 23, 2020 8:36 AM
To: Garrison, Scott <Garrison.Scott@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>
Subject: FW: labels for secondary review

PDFs of labels for reviews.

From: Crawford, Lydia <Crawford.Lydia@epa.gov>
Sent: Thursday, October 22, 2020 12:19 PM
To: Schmid, Emily <Schmid.Emily@epa.gov>; Kenny, Daniel <Kenny.Dan@epa.gov>; Echeverria, Marietta <Echeverria.Marietta@epa.gov>; Rosenblatt, Daniel <Rosenblatt.Dan@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Cc: Meadows, Sarah <Meadows.Sarah@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>
Subject: labels for secondary review

Here are the labels for Xtendimax, Engenia, and Tavium. Since everyone is busy working on the decision document and registration notices, please get your comments to me by **noon tomorrow** so I can condense and send them to the registrants. Let me know if you have any questions or concerns.

Ex. 5 Deliberative Process (DP)

This was their original rebuttal when I suggested they remove it:

Between Crop Applications: "These uses are covered by the preplant instructions for DT cotton and soybean. Having them as separate instructions as well is misleading." Suggested edit was to delete this section. (p. 11)	These uses are not covered by the preplant instructions for DT cotton and soybean. This "Between Crop Applications" use: <ol style="list-style-type: none">(1) Offers growers post-harvest weed control opportunity to have a low-volatility dicamba with greatly improved application requirements to mitigate OTM and protection of endangered species/areas (vs the myriad other dicambas with this label provision).(2) Fall or post-harvest applications tank-mixed with other herbicides can be a very effective tool to manage escaped or newly emerged weeds after harvest equipment, fall tillage, or other production practice has occurred before hard freeze to manage spring weed populations.(3) Allowing additional post-harvest uses also allows retailers and growers to use left-over stock of this low-volatility product in this manner vs other dicambas.
--	---

Best,

Lydia Crawford PhD
Biologist | Herbicide Branch | Registration Division
U.S. Environmental Protection Agency | Office of Pesticide Programs
(703) 347-0622 | Crawford.Lydia@epa.gov

Message

From: Knorr, Michele [knorr.michele@epa.gov]
Sent: 10/23/2020 1:55:06 PM
To: Hathaway, Margaret [Hathaway.Margaret@epa.gov]; Garrison, Scott [Garrison.Scott@epa.gov]
Subject: RE: labels for secondary review

I'm about to start on these now.

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Hathaway, Margaret <Hathaway.Margaret@epa.gov>
Sent: Friday, October 23, 2020 8:36 AM
To: Garrison, Scott <Garrison.Scott@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>
Subject: FW: labels for secondary review

PDFs of labels for reviews.

From: Crawford, Lydia <Crawford.Lydia@epa.gov>
Sent: Thursday, October 22, 2020 12:19 PM
To: Schmid, Emily <Schmid.Emily@epa.gov>; Kenny, Daniel <Kenny.Dan@epa.gov>; Echeverria, Marietta <Echeverria.Marietta@epa.gov>; Rosenblatt, Daniel <Rosenblatt.Dan@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Cc: Meadows, Sarah <Meadows.Sarah@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>
Subject: labels for secondary review

Here are the labels for Xtendimax, Engenia, and Tavium. Since everyone is busy working on the decision document and registration notices, please get your comments to me by **noon tomorrow** so I can condense and send them to the registrants. Let me know if you have any questions or concerns.

Ex. 5 Deliberative Process (DP)

This was their original rebuttal when I suggested they remove it:

Between Crop Applications: "These uses are covered by the preplant instructions for DT cotton and soybean. Having them as separate instructions as well is misleading." Suggested edit was to delete this section. (p. 11)	These uses are not covered by the preplant instructions for DT cotton and soybean. This "Between Crop Applications" use: <ol style="list-style-type: none">(1) Offers growers post-harvest weed control opportunity to have a low-volatility dicamba with greatly improved application requirements to mitigate OTM and protection of endangered species/areas (vs the myriad other dicambas with this label provision).(2) Fall or post-harvest applications tank-mixed with other herbicides can be a very effective tool to manage escaped or newly emerged weeds after harvest equipment, fall tillage, or other production practice has occurred before hard freeze to manage spring weed populations.(3) Allowing additional post-harvest uses also allows retailers and growers to use left-over stock of this low-volatility product in this manner vs other dicambas.
--	---

Best,

Lydia Crawford PhD

Biologist | Herbicide Branch | Registration Division
U.S. Environmental Protection Agency | Office of Pesticide Programs
(703) 347-0622 | Crawford.Lydia@epa.gov

Message

From: Knorr, Michele [knorr.michele@epa.gov]
Sent: 3/3/2020 9:18:24 PM
To: Garrison, Scott [Garrison.Scott@epa.gov]; Perlis, Robert [Perlis.Robert@epa.gov]
Subject: RE: Dicamba: enhanced reporting requirements

I am taking notes on this call and will add this in our paper as well.

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Garrison, Scott <Garrison.Scott@epa.gov>
Sent: Tuesday, March 03, 2020 4:13 PM
To: Knorr, Michele <knorr.michele@epa.gov>; Perlis, Robert <Perlis.Robert@epa.gov>
Subject: Dicamba: enhanced reporting requirements

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Per the 2018 amended registration:

Enhanced Reporting

If Bayer CropScience acquires any of the information identified below, that information must be reported to EPA's Office of Pesticide Programs under section 6(a)(2), or under 40 CFR 159.195 unless you have previously submitted that information to EPA's Office of Pesticide Programs.

12. Information, other than personally identifiable information, received by telephone or in writing regarding potential damage to non-target vegetation from use of dicamba during the 2019 and 2020 growing seasons regardless of any determination that the incident resulted from misuse (intentional or accidental). Information should be forwarded to EPA regardless of which dicamba product may have been used and/or whether or not the alleged damage resulted from a product being used according to label directions. Data should be organized by product and state and should include available information regarding acreage involved, plant species involved, severity of damage, and similar information received. This information must be submitted with cumulative totals and be submitted monthly, beginning March 1, 2019.

13. Information, other than personally identifiable information, received by telephone or in writing regarding reports of dicamba-resistant weeds, and cases of weed control failure and/or suspected resistance. All information should be forwarded to EPA regardless of which dicamba product may have been used and/or whether or not the alleged resistance occurred after an application made according to label directions.

14. A summary of all studies being conducted or sponsored by Bayer CropScience, pertaining to offtarget movement of the labelled use of Xtendimax with VaporGrip Technology (e.g., volatility, physical drift, runoff) must be provided to the EPA.

15. Any information or analysis finding that foods/commodities contain dicamba residues that are not covered by a tolerance or exceed established tolerance levels.

Given the high number of alleged dicamba-related adverse incidents reported to EPA in 2017 and 2018 by state lead agencies (SLAs) as well as registrants under FIFRA section 6(a)(2), it is an Agency priority to work with registrants to better understand potential risks and impacts from the use of dicamba on dicamba-tolerant soybean and dicamba-tolerant cotton. The following information, which shall be treated by EPA as confidential business information, is being required to be submitted to the Agency to assist the Agency in making future regulatory decisions regarding these uses.

16. Seed sales information for dicamba tolerant soybean seed and dicamba tolerant cotton seed. This information should include all sales of such seed for planting or planted in the 2017 through 2020 growing seasons and should be categorized by state.

17. Number and type of containers, including volume of material produced by registrant Xtendimax with VaporGrip Technology that were relabeled with the amended labeling approved by the Agency on October 31, 2018. This information should be categorized by the state to which registrant shipped such material.

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

Message

From: Meadows, Sarah [Meadows.Sarah@epa.gov]
Sent: 3/3/2020 7:50:48 PM
To: Knorr, Michele [knorr.michele@epa.gov]; Garrison, Scott [Garrison.Scott@epa.gov]
CC: Schmid, Emily [Schmid.Emily@epa.gov]; Kenny, Daniel [Kenny.Dan@epa.gov]; Hathaway, Margaret [Hathaway.Margaret@epa.gov]
Subject: RE: Dicamba OTT Use Products - Conditions of Registration DRAFT Letter to Registrants

Thanks, Scott and Michelle. I'll double check all of this with EFED.

Sarah

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Tuesday, March 03, 2020 2:04 PM
To: Garrison, Scott <Garrison.Scott@epa.gov>; Meadows, Sarah <Meadows.Sarah@epa.gov>
Cc: Schmid, Emily <Schmid.Emily@epa.gov>; Kenny, Daniel <Kenny.Dan@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>
Subject: RE: Dicamba OTT Use Products - Conditions of Registration DRAFT Letter to Registrants

Ex. 5 Deliberative Process (DP)

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Garrison, Scott <Garrison.Scott@epa.gov>
Sent: Tuesday, March 03, 2020 2:01 PM
To: Knorr, Michele <knorr.michele@epa.gov>; Meadows, Sarah <Meadows.Sarah@epa.gov>
Cc: Schmid, Emily <Schmid.Emily@epa.gov>; Kenny, Daniel <Kenny.Dan@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>
Subject: RE: Dicamba OTT Use Products - Conditions of Registration DRAFT Letter to Registrants

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Not sure. Published literature often just has graphs without data points.

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Tuesday, March 03, 2020 1:44 PM
To: Garrison, Scott <Garrison.Scott@epa.gov>; Meadows, Sarah <Meadows.Sarah@epa.gov>
Cc: Schmid, Emily <Schmid.Emily@epa.gov>; Kenny, Daniel <Kenny.Dan@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>
Subject: RE: Dicamba OTT Use Products - Conditions of Registration DRAFT Letter to Registrants

Ex. 5 Deliberative Process (DP)

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Garrison, Scott <Garrison.Scott@epa.gov>
Sent: Tuesday, March 03, 2020 1:41 PM
To: Meadows, Sarah <Meadows.Sarah@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>
Cc: Schmid, Emily <Schmid.Emily@epa.gov>; Kenny, Daniel <Kenny.Dan@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>
Subject: RE: Dicamba OTT Use Products - Conditions of Registration DRAFT Letter to Registrants

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Ex. 5 Deliberative Process (DP)

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Meadows, Sarah <Meadows.Sarah@epa.gov>
Sent: Tuesday, March 03, 2020 11:21 AM
To: Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Cc: Schmid, Emily <Schmid.Emily@epa.gov>; Kenny, Daniel <Kenny.Dan@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>
Subject: Dicamba OTT Use Products - Conditions of Registration DRAFT Letter to Registrants

Ex. 5 Deliberative Process (DP)

Thanks,

Sarah

Sarah True Meadows, PhD
US Environmental Protection Agency
Office of Pesticide Programs
Registration Division – Herbicide Branch
(703) 347-0505
meadows.sarah@epa.gov

Message

From: Meadows, Sarah [Meadows.Sarah@epa.gov]
Sent: 3/3/2020 4:20:37 PM
To: Knorr, Michele [knorr.michele@epa.gov]; Garrison, Scott [Garrison.Scott@epa.gov]
CC: Schmid, Emily [Schmid.Emily@epa.gov]; Kenny, Daniel [Kenny.Dan@epa.gov]; Hathaway, Margaret [Hathaway.Margaret@epa.gov]
Subject: Dicamba OTT Use Products - Conditions of Registration DRAFT Letter to Registrants
Attachments: Bayer Xtendimax; 524-617; COR Deficiency Letter djr - 2-27DRAFT.docx

Hi, Michelle and Scott. We have drafted a letter noting the deficiencies in the conditional data that was required in the 2018 registration of Xtendimax. Please take a look and send us any comments or edits. Once this is clean, we'll draft similar letters to Syngenta and BASF.

Thanks,

Sarah

Sarah True Meadows, PhD
US Environmental Protection Agency
Office of Pesticide Programs
Registration Division – Herbicide Branch
(703) 347-0505
meadows.sarah@epa.gov

Message

From: Schmid, Emily [Schmid.Emily@epa.gov]
Sent: 10/19/2020 7:34:16 PM
To: Knorr, Michele [knorr.michele@epa.gov]; Garrison, Scott [Garrison.Scott@epa.gov]
CC: Kenny, Daniel [Kenny.Dan@epa.gov]; Meadows, Sarah [Meadows.Sarah@epa.gov]
Subject: RE: Tavium

That sounds good to me. I'll draft up the new registration notice for Tavium.

I'm copying Sarah since she is working on the decision.

Thanks!

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Monday, October 19, 2020 3:31 PM
To: Schmid, Emily <Schmid.Emily@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Subject: RE: Tavium

Ex. 5 Attorney Client (AC)

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Schmid, Emily <Schmid.Emily@epa.gov>
Sent: Monday, October 19, 2020 2:23 PM
To: Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Subject: Tavium

Hi Michele and Scott,

Ex. 5 Attorney Client (AC)

I'm happy to do it either way but wanted to check on your preference.

Thanks,
Emily

Emily Schmid
Product Manager 25
Herbicide Branch
Registration Division, Office of Pesticide Programs
U.S. Environmental Protection Agency

Message

From: Meadows, Sarah [Meadows.Sarah@epa.gov]
Sent: 10/21/2020 7:08:53 PM
To: Hathaway, Margaret [Hathaway.Margaret@epa.gov]; Kenny, Daniel [Kenny.Dan@epa.gov]; Knorr, Michele [knorr.michele@epa.gov]
CC: Garrison, Scott [Garrison.Scott@epa.gov]; Schmid, Emily [Schmid.Emily@epa.gov]; Crawford, Lydia [Crawford.Lydia@epa.gov]
Subject: RE: HED's New Dicamba Memo

Thanks, I saw that it was originally beaned under BASF's dicamba technical, so I created a new bean for HED under the same product to request their new assessment/update/summary. We're all set!

From: Hathaway, Margaret <Hathaway.Margaret@epa.gov>
Sent: Wednesday, October 21, 2020 3:06 PM
To: Kenny, Daniel <Kenny.Dan@epa.gov>; Meadows, Sarah <Meadows.Sarah@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>
Cc: Garrison, Scott <Garrison.Scott@epa.gov>; Schmid, Emily <Schmid.Emily@epa.gov>; Crawford, Lydia <Crawford.Lydia@epa.gov>
Subject: RE: HED's New Dicamba Memo

Closing the loop: Yes, it's BASF that sent the mutagenicity data.

RD beaned HED via DP 458715 for review of the submission MRIDs 51129101-09 sent to the Agency by BASF, which contained mutagenicity data.

From: Hathaway, Margaret
Sent: Wednesday, October 21, 2020 11:53 AM
To: Kenny, Daniel <Kenny.Dan@epa.gov>; Meadows, Sarah <Meadows.Sarah@epa.gov>; Knorr, Michele <Knorr.Michele@epa.gov>
Cc: Garrison, Scott <Garrison.Scott@epa.gov>; Schmid, Emily <Schmid.Emily@epa.gov>; Crawford, Lydia <Crawford.Lydia@epa.gov>
Subject: RE: HED's New Dicamba Memo

Yes, the NIH study was something EPA's upper management saw mentioned in a press release from the Center for Biological Diversity in May and wanted us to follow up on (see attached email chain from Rick Keigwin and Mike Goodis). We didn't receive this (or anything else) as comments from CBD or NIH on the 2020 dicamba decision. I The National Wildlife Federation also did not cite this NIH study in either their comment letter to EPA or their "Drift Towards Disaster" report, though I just looked and that report did contain some other human health-related citations*

* 87. McDuffie, H. H. et al. Non-Hodgkin's Lymphoma and Specific Pesticide Exposures in Men: Cross-Canada Study of Pesticides and Health. *Cancer Epidemiology and Prevention Biomarkers* **10**, 1155-1163 (2001).

88. Lerro, C. C. et al. Dicamba Use and Cancer Incidence in the Agricultural Health Study: An Updated Analysis. *International Journal of Epidemiology* (2020).

89. Burmeister, L. F. Cancer in Iowa Farmers: Recent Results. *American journal of industrial medicine* **18**, 295-301 (1990).

90. Alavanja, M. C., Hoppin, J. A. & Kamel, F. Health Effects of Chronic Pesticide Exposure: Cancer and Neurotoxicity. *Annu. Rev. Public Health* **25**, 155-197 (2004).

91. Samanic, C. et al. Cancer Incidence among Pesticide Applicators Exposed to Dicamba in the Agricultural Health Study. *Environmental Health Perspectives* **114**, 1521-1526 (2006).

From: Kenny, Daniel <Kenny.Dan@epa.gov>
Sent: Wednesday, October 21, 2020 10:21 AM
To: Meadows, Sarah <Meadows.Sarah@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>
Cc: Garrison, Scott <Garrison.Scott@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>; Schmid, Emily

<Schmid.Emily@epa.gov>; Crawford, Lydia <Crawford.Lydia@epa.gov>

Subject: RE: HED's New Dicamba Memo

I think they looked at them both at the same time, and covered them in the same draft memo, if that helps. I believe that the NIH study was published in public literature and not actually submitted to us, but I could be wrong about that.

From: Meadows, Sarah <Meadows.Sarah@epa.gov>

Sent: Wednesday, October 21, 2020 10:19 AM

To: Kenny, Daniel <Kenny.Dan@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>

Cc: Garrison, Scott <Garrison.Scott@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>; Schmid, Emily <Schmid.Emily@epa.gov>; Crawford, Lydia <Crawford.Lydia@epa.gov>

Subject: RE: HED's New Dicamba Memo

Oh sorry, I was combining the two. Where should we add the NIH study in OPPIN so that we can get a bean and decision number for HED?

From: Kenny, Daniel <Kenny.Dan@epa.gov>

Sent: Wednesday, October 21, 2020 10:17 AM

To: Knorr, Michele <knorr.michele@epa.gov>; Meadows, Sarah <Meadows.Sarah@epa.gov>

Cc: Garrison, Scott <Garrison.Scott@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>; Schmid, Emily <Schmid.Emily@epa.gov>; Crawford, Lydia <Crawford.Lydia@epa.gov>

Subject: RE: HED's New Dicamba Memo

Right. CBD was citing it somewhere, which brought it to our attention. HED looked at both.

From: Knorr, Michele <knorr.michele@epa.gov>

Sent: Wednesday, October 21, 2020 10:14 AM

To: Meadows, Sarah <Meadows.Sarah@epa.gov>

Cc: Kenny, Daniel <Kenny.Dan@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>; Schmid, Emily <Schmid.Emily@epa.gov>; Crawford, Lydia <Crawford.Lydia@epa.gov>

Subject: Re: HED's New Dicamba Memo

There is the NIH study too, right?

Michele Knorr
OGC
202-564-5631

On Oct 21, 2020, at 10:12 AM, Meadows, Sarah <Meadows.Sarah@epa.gov> wrote:

Got it, thanks everyone!

From: Kenny, Daniel <Kenny.Dan@epa.gov>

Sent: Wednesday, October 21, 2020 10:12 AM

To: Meadows, Sarah <Meadows.Sarah@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>

Cc: Hathaway, Margaret <Hathaway.Margaret@epa.gov>; Schmid, Emily <Schmid.Emily@epa.gov>; Crawford, Lydia <Crawford.Lydia@epa.gov>

Subject: RE: HED's New Dicamba Memo

I also thought they were from BASF. I'm pretty sure that's right.

From: Meadows, Sarah <Meadows.Sarah@epa.gov>
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Subject: RE: HED's New Dicamba Memo

Meg, do you remember?

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Wednesday, October 21, 2020 9:50 AM
To: Meadows, Sarah <Meadows.Sarah@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Cc: Kenny, Daniel <Kenny.Dan@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>; Schmid, Emily <Schmid.Emily@epa.gov>; Crawford, Lydia <Crawford.Lydia@epa.gov>
Subject: RE: HED's New Dicamba Memo

If Bayer submitted the mutagenicity studies under 6a2 put it under their name. I thought they were from BASF. But, I have no memory left.

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Meadows, Sarah <Meadows.Sarah@epa.gov>
Sent: Wednesday, October 21, 2020 9:47 AM
To: Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Cc: Kenny, Daniel <Kenny.Dan@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>; Schmid, Emily <Schmid.Emily@epa.gov>; Crawford, Lydia <Crawford.Lydia@epa.gov>
Subject: HED's New Dicamba Memo

Hi, Michele and Scott. HED just sent us their new memo. Meg will be putting a version on MS teams soon for concurrent review.

One thing HED noted was the need for a bean for the memo. Should we put the muta. studies as a submission under Bayer's new Xtendimax product in OPPIN? Please just let us know what would be best for the record.

Thanks,

Sarah

Sarah True Meadows, PhD
US Environmental Protection Agency
Office of Pesticide Programs
Registration Division – Herbicide Branch
(703) 347-0505

meadows.sarah@epa.gov

Message

From: Hathaway, Margaret [Hathaway.Margaret@epa.gov]
Sent: 10/21/2020 3:52:56 PM
To: Kenny, Daniel [Kenny.Dan@epa.gov]; Meadows, Sarah [Meadows.Sarah@epa.gov]; Knorr, Michele [knorr.michele@epa.gov]
CC: Garrison, Scott [Garrison.Scott@epa.gov]; Schmid, Emily [Schmid.Emily@epa.gov]; Crawford, Lydia [Crawford.Lydia@epa.gov]
Subject: RE: HED's New Dicamba Memo
Attachments: FW: NIH Study in Dicamba

Yes, the NIH study was something EPA's upper management saw mentioned in a press release from the Center for Biological Diversity in May and wanted us to follow up on (see attached email chain from Rick Keigwin and Mike Goodis). We didn't receive this (or anything else) as comments from CBD or NIH on the 2020 dicamba decision. I The National Wildlife Federation also did not cite this NIH study in either their comment letter to EPA or their "Drift Towards Disaster" report, though I just looked and that report did contain some other human health-related citations*

* 87. McDuffie, H. H. et al. Non-Hodgkin's Lymphoma and Specific Pesticide Exposures in Men: Cross-Canada Study of Pesticides and Health. *Cancer Epidemiology and Prevention Biomarkers* **10**, 1155-1163 (2001).
88. Lerro, C. C. et al. Dicamba Use and Cancer Incidence in the Agricultural Health Study: An Updated Analysis. *International Journal of Epidemiology* (2020).
89. Burmeister, L. F. Cancer in Iowa Farmers: Recent Results. *American journal of industrial medicine* **18**, 295-301 (1990).
90. Alavanja, M. C., Hoppin, J. A. & Kamel, F. Health Effects of Chronic Pesticide Exposure: Cancer and Neurotoxicity. *Annu. Rev. Public Health* **25**, 155-197 (2004).
91. Samanic, C. et al. Cancer Incidence among Pesticide Applicators Exposed to Dicamba in the Agricultural Health Study. *Environmental Health Perspectives* **114**, 1521-1526 (2006).

From: Kenny, Daniel <Kenny.Dan@epa.gov>
Sent: Wednesday, October 21, 2020 10:21 AM
To: Meadows, Sarah <Meadows.Sarah@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>
Cc: Garrison, Scott <Garrison.Scott@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>; Schmid, Emily <Schmid.Emily@epa.gov>; Crawford, Lydia <Crawford.Lydia@epa.gov>
Subject: RE: HED's New Dicamba Memo

I think they looked at them both at the same time, and covered them in the same draft memo, if that helps. I believe that the NIH study was published in public literature and not actually submitted to us, but I could be wrong about that.

From: Meadows, Sarah <Meadows.Sarah@epa.gov>
Sent: Wednesday, October 21, 2020 10:19 AM
To: Kenny, Daniel <Kenny.Dan@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>
Cc: Garrison, Scott <Garrison.Scott@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>; Schmid, Emily <Schmid.Emily@epa.gov>; Crawford, Lydia <Crawford.Lydia@epa.gov>
Subject: RE: HED's New Dicamba Memo

Oh sorry, I was combining the two. Where should we add the NIH study in OPPIN so that we can get a bean and decision number for HED?

From: Kenny, Daniel <Kenny.Dan@epa.gov>
Sent: Wednesday, October 21, 2020 10:17 AM
To: Knorr, Michele <knorr.michele@epa.gov>; Meadows, Sarah <Meadows.Sarah@epa.gov>
Cc: Garrison, Scott <Garrison.Scott@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>; Schmid, Emily <Schmid.Emily@epa.gov>; Crawford, Lydia <Crawford.Lydia@epa.gov>
Subject: RE: HED's New Dicamba Memo

Right. CBD was citing it somewhere, which brought it to our attention. HED looked at both.

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Wednesday, October 21, 2020 10:14 AM
To: Meadows, Sarah <Meadows.Sarah@epa.gov>
Cc: Kenny, Daniel <Kenny.Dan@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>; Schmid, Emily <Schmid.Emily@epa.gov>; Crawford, Lydia <Crawford.Lydia@epa.gov>
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Michele Knorr
OGC
202-564-5631

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Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

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To: Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Cc: Kenny, Daniel <Kenny.Dan@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>;
Schmid, Emily <Schmid.Emily@epa.gov>; Crawford, Lydia <Crawford.Lydia@epa.gov>
Subject: HED's New Dicamba Memo

Hi, Michele and Scott. HED just sent us their new memo. Meg will be putting a version on MS teams soon for concurrent review.

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Thanks,

Sarah

Sarah True Meadows, PhD
US Environmental Protection Agency
Office of Pesticide Programs
Registration Division – Herbicide Branch
(703) 347-0505
meadows.sarah@epa.gov

Message

From: Knorr, Michele [knorr.michele@epa.gov]
Sent: 10/19/2020 2:54:49 PM
To: Garrison, Scott [Garrison.Scott@epa.gov]
Subject: RE: T&C Language

I apologize. I was just referring to the appendices. I should be qualifying my comment. And, the benefits document is being reworked, so I'm not sure where they are on a new version. Double check before you do work in an old version.

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Garrison, Scott <Garrison.Scott@epa.gov>
Sent: Monday, October 19, 2020 10:52 AM
To: Knorr, Michele <knorr.michele@epa.gov>
Subject: RE: T&C Language

Confidential communication for internal deliberations only. Attorney-client privilege. Do not distribute outside U.S. Government.

You keep saying I'm ahead. I haven't looked at the benefits document yet. And who knows what else...

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Monday, October 19, 2020 10:47 AM
To: Echeverria, Marietta <Echeverria.Marietta@epa.gov>
Cc: Garrison, Scott <Garrison.Scott@epa.gov>; Kenny, Daniel <Kenny.Dan@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>; Rosenblatt, Daniel <Rosenblatt.Dan@epa.gov>
Subject: Re: T&C Language

I can talk at 1. I need to finish reading appendices before I can look at this language. I think Scott is ahead of me so he may have time soon to look at it.

Michele Knorr
OGC
202-564-5631

On Oct 19, 2020, at 10:44 AM, Echeverria, Marietta <Echeverria.Marietta@epa.gov> wrote:

Do you guys have time at 1 pm for a quick discussion re: the term language?

From: Echeverria, Marietta

Sent: Monday, October 19, 2020 10:41 AM

To: Garrison, Scott <Garrison.Scott@epa.gov>; Knorr, Michele <Knorr.Michele@epa.gov>

Cc: Kenny, Daniel <Kenny.Dan@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>;
Rosenblatt, Daniel <Rosenblatt.Dan@epa.gov>

Subject: FW: T&C Language

Is this consistent with what you discussed with attorneys? Any comments/questions?

From: Thomas Marvin <thomas.marvin@bayer.com>

Sent: Monday, October 19, 2020 9:42 AM

To: Messina, Edward <Messina.Edward@epa.gov>; Echeverria, Marietta
<Echeverria.Marietta@epa.gov>; Goodis, Michael <Goodis.Michael@epa.gov>

Subject: T&C Language

Ed, Marietta, and Mike: Following up on the list of outstanding issues, here is a proposed draft of a term & condition relative to buffering agents:

So long as the XtendiMax registration continues to require use of a VRA with every application, Bayer will:

1. Take appropriate action(s) to ensure that a sufficient supply of VaporGrip Xtra or any other appropriate VRA is in the channels of trade.
2. Make arrangements through appropriate distribution networks to ensure that VaporGrip Xtra or other appropriate VRAs are timely available to applicators in all locations where XtendiMax will be applied, before any applicator would apply XtendiMax. Access to VaporGrip Xtra will either be through the same retail outlets as XtendiMax, or if necessary in particular locations, available from other readily accessible sources. Registrant will timely make available to every applicator information on where VaporGrip Xtra can be ordered or purchased.
3. Ensure that all training materials clearly require the mandatory use of VaporGrip Xtra or another VRA with every XtendiMax application. Work with State authorities to ensure that appropriate training occurs before any application of XtendiMax is made.

Message

From: Garrison, Scott [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F3BA15187A464688A839A843B7B59CA0-SGARRISO]
Sent: 9/11/2020 7:16:13 PM
To: Knorr, Michele [Knorr.Michele@epa.gov]; Kenny, Daniel [Kenny.Dan@epa.gov]
Subject: RE: Convo.....(can we get answers to this???).

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Ex. 5 AC/DP

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Friday, September 11, 2020 3:13 PM
To: Kenny, Daniel <Kenny.Dan@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Subject: RE: Convo.....(can we get answers to this???).

Ex. 5 AC/DP

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Kenny, Daniel <Kenny.Dan@epa.gov>
Sent: Friday, September 11, 2020 3:11 PM
To: Garrison, Scott <Garrison.Scott@epa.gov>
Cc: Knorr, Michele <knorr.michele@epa.gov>
Subject: RE: Convo.....(can we get answers to this???).

Exactly what I was thinking...

From: Garrison, Scott <Garrison.Scott@epa.gov>
Sent: Friday, September 11, 2020 2:52 PM
To: Kenny, Daniel <Kenny.Dan@epa.gov>
Cc: Knorr, Michele <knorr.michele@epa.gov>
Subject: RE: Convo.....(can we get answers to this???).

Ex. 5 AC/DP

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Kenny, Daniel <Kenny.Dan@epa.gov>
Sent: Friday, September 11, 2020 2:35 PM
To: Echeverria, Marietta <Echeverria.Marietta@epa.gov>; Messina, Edward <Messina.Edward@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Matuszko, Jan <Matuszko.Jan@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Subject: RE: Convo.....(can we get answers to this???)

FYI – I’m pretty sure I know what Phil was trying to say, although it is good to get clarification right from the source. VGX is in fact exactly the same ingredient, except at a higher amount [VaporGrip (VG) + Extra VaporGrip (X) = VGX]. I think what he was trying to do was

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

But again, best to have him confirm.

From: Echeverria, Marietta <Echeverria.Marietta@epa.gov>
Sent: Friday, September 11, 2020 1:11 PM
To: Dunn, Alexandra <dunn.alexandra@epa.gov>; Messina, Edward <Messina.Edward@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Matuszko, Jan <Matuszko.Jan@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Cc: Fischer, David <Fischer.David@epa.gov>; Dekleva, Lynn <dekleva.lynn@epa.gov>; Kenny, Daniel <Kenny.Dan@epa.gov>
Subject: RE: Convo.....(can we get answers to this???)

To clarify:

- Bayer is proposing registration on xtendimax (same product formulation that was vacated)
- The proposed label requires that the user add a pH buffering agent to the tank mix (via a website with “approved” buffering agents)
- We will follow up with Bayer on what Phil Perry was referring to

From: Dunn, Alexandra <dunn.alexandra@epa.gov>
Sent: Friday, September 11, 2020 12:39 PM
To: Messina, Edward <Messina.Edward@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Matuszko, Jan <Matuszko.Jan@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Echeverria, Marietta <Echeverria.Marietta@epa.gov>
Cc: Fischer, David <Fischer.David@epa.gov>; Dekleva, Lynn <dekleva.lynn@epa.gov>
Subject: Convo.....(can we get answers to this???)

[12:24 PM] Matuszko, Jan

Can Bayer please clarify if the Vapor Grip extra we are looking at now contains different constituents than the previous form.

[12:25 PM] Knorr, Michele

The formula is the same, VGX is added in the field. The extra VGX is not being registered, correct?

[12:26 PM] Garrison, Scott

Ex. 5 Deliberative Process (DP)

[12:30 PM] Echeverria, Marietta

Yes, Knorr, Michele that's my understanding

Team: Can we specify the "sweet spot".

Alexandra Dapolito Dunn, Esq.

Assistant Administrator

Office of Chemical Safety and Pollution Prevention

US Environmental Protection Agency

Washington, DC

Message

From: Garrison, Scott [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F3BA15187A464688A839A843B7B59CA0-SGARRISO]
Sent: 10/26/2020 6:40:25 PM
To: Koch, Erin [Koch.Erin@epa.gov]; Lis-Coghlan, Kamila [lis-coghlan.kamila@epa.gov]; Drinkard, Andrea [Drinkard.Andrea@epa.gov]
CC: Cole, Joseph E. [cole.josephe@epa.gov]; Knorr, Michele [Knorr.Michele@epa.gov]
Subject: RE: FINAL Dicamba Press Release

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Agreed.

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Koch, Erin <Koch.Erin@epa.gov>
Sent: Monday, October 26, 2020 2:38 PM
To: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>
Cc: Cole, Joseph E. <cole.josephe@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Subject: RE: FINAL Dicamba Press Release

I'll make that same call for the rest of PTSLO, nothing more from us.

From: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>
Sent: Monday, October 26, 2020 2:37 PM
To: Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>
Cc: Cole, Joseph E. <cole.josephe@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Subject: RE: FINAL Dicamba Press Release

Nothing more from me, thanks.

From: Drinkard, Andrea <Drinkard.Andrea@epa.gov>
Sent: Monday, October 26, 2020 2:36 PM
To: Koch, Erin <Koch.Erin@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>
Cc: Cole, Joseph E. <cole.josephe@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Subject: RE: FINAL Dicamba Press Release

Thanks. I would suggest cutting the full sentence. Otherwise these look good. Let me know ASAP if there are additional edits.

Ex. 5 AC/DP

From: Koch, Erin <Koch.Erin@epa.gov>
Sent: Monday, October 26, 2020 2:34 PM
To: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>
Cc: Cole, Joseph E. <cole.josephe@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Subject: FW: FINAL Dicamba Press Release

Suggested edits highlighted below.

From: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>
Sent: Monday, October 26, 2020 1:35 PM
To: Cole, Joseph E. <cole.josephe@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>
Cc: Drinkard, Andrea <Drinkard.Andrea@epa.gov>
Subject: RE: FINAL Dicamba Press Release

Adding the rest of the PTSLO dicamba team, thanks.

From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Monday, October 26, 2020 1:16 PM
To: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>
Cc: Drinkard, Andrea <Drinkard.Andrea@epa.gov>
Subject: FW: FINAL Dicamba Press Release

Please review and provide edits to Andrea ASAP. Share with the team as appropriate. Thank you.

David Fotouhi

Acting General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Drinkard, Andrea <Drinkard.Andrea@epa.gov>
Sent: Monday, October 26, 2020 1:09 PM
To: Block, Molly <block.molly@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Rodriguez, Alejandra (Allie) <rodriguez.alejandra@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Johnson, Taylor <Johnson.Taylor.C@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; Jenkins, Brandi <Jenkins.Brandi@epa.gov>; Striegel, Megan <Striegel.Megan@epa.gov>
Subject: FINAL Dicamba Press Release

Hi all—

Thanks all for your input into the Dicamba press release. These version includes the approved quote and a few last minute edits. We should be pens down on this, but if there are any last minute tweaks please let me know ASAP as we have multiple documents that rely on the language included here.

Allison, please let me know if there is a direct link to the dicamba materials that we should be adding to the release.

Allie, if you haven't already, could you please upload this version into Campaign Monitor?

Thanks!

EPA Announces 2020 Dicamba Registration Decision

Brooklet, Ga. — At the Cromley Farm, U.S. Environmental Protection Agency (EPA) Administrator Andrew Wheeler announced that EPA is approving new five-year registrations for two dicamba products and extending the registration of an additional dicamba product. All three registrations include new control measures to ensure these products can be used effectively while protecting the environment, including non-target plants, animals, and other crops not tolerant to dicamba.

“With today’s decision, farmers now have the certainty they need to make plans for their 2021 growing season,” **said EPA Administrator Andrew Wheeler.** “After reviewing substantial amounts of new information, conducting scientific assessments based on the best available science, and carefully considering input from stakeholders we have reached a resolution that is good for our farmers and our environment.”

Through today’s action, EPA approved new registrations for two “over the top” (OTT) dicamba products—XtendiMax with VaporGrip Technology and Engenia Herbicide—and extended the registration for an additional OTT dicamba product, Tavium plus VaporGrip Technology. These registrations are only for use on dicamba-tolerant (DT) cotton and soybeans and will expire in 2025, providing certainty to American agriculture for the upcoming growing season and beyond.

To manage off-site movement of dicamba, EPA’s 2020 registration features important control measures, including:

- Requiring an approved pH-buffering agent (also called a Volatility Reduction Agent or VRA) be tank mixed with over-the-top dicamba products prior to all applications to control volatility.
- A downwind buffer of 240 feet will be required and 310 feet in areas where listed species are located.
- Prohibiting OTT application of dicamba on soybeans after June 30 and cotton after July 30.
- Simplifying the label and use directions so that growers can more easily determine when and how to properly apply dicamba.

Ex. 5 Deliberative Process (DP)

The 2020 registration labels also provide new flexibilities for growers and states. For example, there are opportunities for growers to reduce the downwind spray buffer for soybeans through use of certain approved hooded sprayers as an alternative control method. EPA also recognizes and supports the important authority FIFRA section 24 gives the states for issuing locally appropriate regulations for pesticide use. If a state wishes to expand the federal OTT uses of dicamba to better meet special local needs, the agency will work with them to support their goals.

This action was informed by input from state regulators, grower groups, academic researchers, pesticide manufacturers, and others. EPA reviewed substantial amounts of new information and conducted scientific assessments based on the best available science, including making an Effect Determinations under the Endangered Species Act (ESA). With this information and input, EPA has concluded that these registration actions meet Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) registration standards. EPA believes that these new analyses address the concerns expressed in regard to EPA’s 2018 dicamba registrations in the June 2020 U.S. Court of Appeals for the Ninth Circuit. After completing its Effects Determinations for dicamba uses on DT cotton and soybeans, Further, EPA concluded that with the control measures now required on labels, these actions either do not affect or are not likely to adversely affect endangered or threatened species.

Ex. 5 AC/DP

To view the final registration of the dicamba products, visit docket EPA-HQ-OPP-2020-0492 at www.regulations.gov.

Background

The United States is the world's leading soybean producer and second-leading soybean exporter and also serves as the world's third-largest cotton producer and the leading cotton exporter. Today, there are limited cost-effective options to control herbicide-resistant weeds affecting these commodities. In 2018, approximately 41 percent of U.S. soybean acreage was planted with dicamba-tolerant (DT) seed and almost 70 percent of U.S. cotton acreage was planted with DT seed in 2019. Relative to alternative herbicide programs, postemergence dicamba may reduce weed control costs for some growers, possibly by as much as \$10 per acre, or over five percent of net operating revenue, not accounting for all measures growers will have to take to control off-field movement of dicamba.

Following reports of damage resulting from the off-site movement of dicamba, EPA amended the dicamba registration labels in 2017 and in 2018. In June 2020, the U.S. Court of Appeals for the Ninth Circuit vacated the registrations for three dicamba products: XtendiMax with VaporGrip Technology, Engenia Herbicide, and DuPont FeXapan Herbicide. As a result of the Court's decision, EPA issued cancellation orders outlining limited circumstances under which existing stocks of the three affected products could be distributed and used until July 31, 2020.

Andrea Drinkard
Senior Advisor
EPA Office of Public Affairs
Desk: 202.564.1601
Cell: 202.236.7765

Message

From: Garrison, Scott [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F3BA15187A464688A839A843B7B59CA0-SGARRISO]
Sent: 7/21/2020 8:10:42 PM
To: Koch, Erin [Koch.Erin@epa.gov]; Knorr, Michele [Knorr.Michele@epa.gov]
CC: Cole, Joseph E. [cole.josephe@epa.gov]
Subject: RE: Dicamba petitions for rehearing en banc
Attachments: ENV_DEFENSE-#933738-v1-DN_170_Filed_(ECF)_Intervenor_BASF_Corporation_petition_for_rehearing_en_banc_(from_06_03_2020_opinion)___Date_of_s

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BASF has filed a petition as well (attached), so this is both a summary of the points addressed in reg review re dicamba and new material:

- FRAP Rule 35(e) says no response may be filed to a petition for an en banc consideration unless the court orders a response. However, the 9th Circuit's Rule 35-2 provides that the court will not order a rehearing en banc without giving the other parties an opportunity to express their views. So we expect to receive a scheduling order shortly.
- BASF (represented by John Cruden, et al.) argues that the panel failed to consider the administrative record for BASF's Engenia registration, was inconsistent with basic due process principles, and improperly allowed petitioners' allegations of harm from Xtendimax to confer standing to challenge BASF's Engenia. BASF further argues that the the panel did not have jurisdiction over Engenia owing to the absence of a public hearing on Engenia and on account of the petitioners' failure to meet the FIFRA 60-day filing deadline. BASF also argues that the panel misapplied the defferential substantial evidence standard.

Ex. 5 AC/AWP

Ex. 5 AC/AWP

- In the absence of the 9th Circuit' vacatur and EPA's consequent cancellation order, there would be no federal stop date for dicamba use. Various states has cut-off dates, but otherwise, growers could be applying dicamba as late as they want. Best guesses are some would use in September if available, probably none later.

Scott Garrison
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Office of General Counsel
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202-564-4047
garrison.scott@epa.gov

From: Koch, Erin <Koch.Erin@epa.gov>
Sent: Tuesday, July 21, 2020 2:20 PM
To: Garrison, Scott <Garrison.Scott@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>
Cc: Cole, Joseph E. <cole.josephe@epa.gov>
Subject: FW: Dicamba petitions for rehearing en banc

Scott,

Ex. 5 AC/AWP

Also if you could check with OPP on Kamila's question – is there a date after which there would have been no more use had the registrations not been vacated?

Thanks,
Erin

From: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>
Sent: Tuesday, July 21, 2020 9:56 AM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Cole, Joseph E. <cole.josephe@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Subject: RE: Dicamba petitions for rehearing en banc

Thanks – looping in Joe, Erin, Michele, and Scott, as we'll likely be discussing this during Reg Review today.

From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Tuesday, July 21, 2020 9:27 AM
To: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>
Subject: RE: Dicamba petitions for rehearing en banc

Ex. 5 AC/AWP

David Fotouhi

Principal Deputy General Counsel
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Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>
Sent: Tuesday, July 21, 2020 9:05 AM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Subject: FW: Dicamba petitions for rehearing en banc

FYI

From: Garrison, Scott <Garrison.Scott@epa.gov>
Sent: Tuesday, July 21, 2020 9:02 AM
To: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Kenny, Daniel <Kenny.Dan@epa.gov>
Cc: Koch, Erin <Koch.Erin@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>
Subject: Dicamba petitions for rehearing en banc

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Attached are 2 petitions for rehearing filed last evening:

Monsanto asks for review by the full 9th Circuit of the panel's decision on two grounds. First, that the panel accepted petitioners' filing after the statutory 60-day jurisdictional window based on an EPA regulation providing that the agency's orders generally are not "entered" for purposes of judicial review until "two weeks after" they are signed. Second, that the panel diluted the substantial evidence standard beyond recognition by affording no deference whatsoever to the agency's expert judgments, and cherry-picking the record for evidence supporting vacatur—in effect, substituting its judgment of the highly technical scientific evidence for EPA's.

Du Pont asks for en banc review of the panel's decision to allow a challenge to the FeXapan and Engenia registrations despite petitioners failing to identify that challenge in the Petition for Review. Du Pont also challenges the merits of the panel decision for failing to defer to the Agency's technical expertise and experience.

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Office of General Counsel

U.S. Environmental Protection Agency

202-564-4047

garrison.scott@epa.gov

Message

From: Garrison, Scott [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F3BA15187A464688A839A843B7B59CA0-SGARRISO]
Sent: 6/23/2020 8:23:42 PM
To: Cole, Joseph E. [cole.josephe@epa.gov]
CC: Koch, Erin [Koch.Erin@epa.gov]; Knorr, Michele [Knorr.Michele@epa.gov]
Subject: FW: dicamba rehearing
Attachments: draft rehearing memo 2..docx

Confidential communication for internal deliberations only. Attorney-client privilege. Do not distribute outside U.S. Government.

Here's our draft memo re moving for rehearing. It follows pretty closely David's outline below, but as you will see from the couple of internal comments I've left in it, we have some thoughts about organizing it differently. If you are satisfied with it (with or without any edits you might make), you can send it on to Kamila. If you think it needs more work, you can send it back to us.

Michele & Erin: Fyi, my edits and responses to comments are in the track changes version on the shared site.

Scott Garrison
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Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Tuesday, June 23, 2020 8:47 AM
To: Koch, Erin <Koch.Erin@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Cc: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>
Subject: RE: dicamba rehearing

Erin:

Thanks for this analysis. **Ex. 5 AC/DP**

Could you please prepare a 1-2 pager for Alex and subsequently the Administrator that lays out the rehearing considerations. I envision something that tracks the following outline:

1. 1-paragraph overview of the decision
2. Potential rehearing arguments
3. Considerations in favor of rehearing **Ex. 5 AC/DP**
Ex. 5 AC/DP
4. Considerations against rehearing

Ex. 5 AC/DP

Please work with Kamila on a draft and send to me for review when it’s ready. Thanks!

Best,

David

David Fotouhi

Principal Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Koch, Erin <Koch.Erin@epa.gov>
Sent: Thursday, June 18, 2020 5:26 PM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Subject: dicamba rehearing

David,

The internal deadline for letting DOJ know EPA’s recommendation on rehearing in the dicamba case was Wednesday. Given the emergency motion filed by petitioners, the date by when we must file for rehearing could change, but if the Court doesn’t reopen the mandate, we would need to seek rehearing by July 18.

As for potential grounds for rehearing,

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

If you think appropriate, Jessica O'Donnell suggested that you might discuss this at Monday's regular meeting with DoJ. I agreed that they should be prepared to tee this up for Jon for discussion. As we are unsure if Matt will be in attendance at that meeting, we were not sure if that would be a good opportunity to discuss with DoJ, or if you would prefer to address this differently. Please advise if you would like to discuss at the Monday meeting with DoJ.

Let me know if you have questions,

Erin S. Koch
Pesticides and Toxic Substances Law Office
Office of General Counsel
US EPA
202-564-1718

Message

From: Garrison, Scott [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F3BA15187A464688A839A843B7B59CA0-SGARRISO]
Sent: 6/23/2020 3:46:01 PM
To: Koch, Erin [Koch.Erin@epa.gov]; Knorr, Michele [Knorr.Michele@epa.gov]
Subject: RE: dicamba rehearing
Attachments: draft rehearing memo.docx

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For your consideration...

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
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202-564-4047
garrison.scott@epa.gov

From: Koch, Erin <Koch.Erin@epa.gov>
Sent: Tuesday, June 23, 2020 8:50 AM
To: Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Subject: FW: dicamba rehearing

Can one of you start a draft based on David's outline? I'll leave it for you to decide and whether a one-drive version make sense if you want to break it up.

Thanks!

From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Tuesday, June 23, 2020 8:47 AM
To: Koch, Erin <Koch.Erin@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Cc: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>
Subject: RE: dicamba rehearing

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Thanks for this analysis. Ex. 5 AC/DP

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4. Considerations against rehearing

Ex. 5 AC/DP

Ex. 5 AC/DP

5. OGC recommendation:

Ex. 5 AC/DP

Ex. 5 AC/DP

Please work with Kamila on a draft and send to me for review when it's ready. Thanks!

Best,

David

David Fotouhi

Principal Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Koch, Erin <Koch.Erin@epa.gov>

Sent: Thursday, June 18, 2020 5:26 PM

To: Fotouhi, David <Fotouhi.David@epa.gov>

Cc: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>

Subject: dicamba rehearing

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Let me know if you have questions,

Erin S. Koch
Pesticides and Toxic Substances Law Office
Office of General Counsel
US EPA
202-564-1718

Message

From: Garrison, Scott [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F3BA15187A464688A839A843B7B59CA0-SGARRISO]
Sent: 6/23/2020 12:51:54 PM
To: Koch, Erin [Koch.Erin@epa.gov]; Knorr, Michele [Knorr.Michele@epa.gov]
Subject: RE: dicamba rehearing

Confidential communication for internal deliberations only. Attorney-client privilege. Do not distribute outside U.S. Government.

Ok, I'll start on it.

Scott Garrison
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Office of General Counsel
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202-564-4047
garrison.scott@epa.gov

From: Koch, Erin <Koch.Erin@epa.gov>
Sent: Tuesday, June 23, 2020 8:50 AM
To: Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Subject: FW: dicamba rehearing

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From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Tuesday, June 23, 2020 8:47 AM
To: Koch, Erin <Koch.Erin@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Cc: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>
Subject: RE: dicamba rehearing

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Ex. 5 AC/DP

Ex. 5 AC/DP

5. OGC recommendation

Ex. 5 AC/DP

Ex. 5 AC/DP

Please work with Kamila on a draft and send to me for review when it's ready. Thanks!

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David

David Fotouhi

Principal Deputy General Counsel
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U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Koch, Erin <Koch.Erin@epa.gov>

Sent: Thursday, June 18, 2020 5:26 PM

To: Fotouhi, David <Fotouhi.David@epa.gov>

Cc: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>

Subject: dicamba rehearing

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Let me know if you have questions,

Erin S. Koch
Pesticides and Toxic Substances Law Office
Office of General Counsel
US EPA
202-564-1718

Message

From: Garrison, Scott [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F3BA15187A464688A839A843B7B59CA0-SGARRISO]
Sent: 7/1/2020 9:12:37 PM
To: Hathaway, Margaret [Hathaway.Margaret@epa.gov]; Knorr, Michele [Knorr.Michele@epa.gov]
CC: Kenny, Daniel [Kenny.Dan@epa.gov]; Schmid, Emily [Schmid.Emily@epa.gov]; Rosenblatt, Daniel [Rosenblatt.Dan@epa.gov]
Subject: RE: Dicamba Litigation Timeline
Attachments: 2020-06-25 Order denying rehearing.pdf; 2020-06-24 duPont resp re recall mandate.pdf; 2020-06-24 BASF reply re recall mandate.pdf; 2020-06-23 Pet oppo to BASF recall mandate.pdf; 2020-06-19 Pet Oppo to Amici brief.pdf; 2020-06-19 Order granting intervention and Amici brief.pdf; 2020-06-19 Order Denying Emergency Motion.pdf; 2020-06-17 Pet Oppo to Intervention.pdf; 2020-06-16_Monsanto_Brief_Contempt.PDF; 2020-06-16_Am_Farm_Bureau_et_al_Amicus_Resp__Contempt.PDF; 2020-06-16 Dupont_Reservation_of_Rights_to_join_Monsanto.PDF; 2020-06-16 Croplife_Amicus_Brief_Contempt.PDF; 2020-06-16 BASF_Re_Contempt and X-motion.PDF; 2020-06-12 duPont intervention mot.pdf; 2020-06-12 BASF intervention mot.pdf

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Here is a list of the missing events; copies of the filings are attached.

On June 12, 2020 BASF Corporation and E.I. du Pont de Nemours and Company each filed motions to intervene.

Also on June 16, 2020, Monsanto filed a brief in response to Petitioners' motion to enforce the Court's order and for contempt. duPont file a reservation of rights to join in Monsanto's brief if its motion to intervene is granted. BASF filed a brief and a cross-motion to recall the mandate and allow rehearing on whether the Court has jurisdiction over the Engenia registration. The American Farm Bureau Federation and Croplife America each filed motions for leave to file amicus curiae briefs.

On June 17, 2020, Petitioner's filed their opposition to the BASF and du Pont motions to intervene.

On June 19, 2020, Petitioners' filed their opposition to the American Farm Bureau Federation and Croplife America each filed motions for leave to file amicus curiae briefs. The Court issued a series of orders; the most significant denied Petitioners' emergency motion to enforce the Court's vacatur and hold EPA in contempt. The Court also granted Petitioners' motion to file an oversized reply brief for their emergency motion, granted the BASF and du Pont motions to intervene, and granted the American Farm Bureau Federation and Croplife America's motions for leave to file amicus briefs.

On June 23, 2020, Petitioners' filed their opposition to BASF's cross-motion to recall the mandate and allow rehearing on jurisdiction over Engenia.

On June 24, 2020, Intervenors BASF and du Pont filed reply briefs in support of BASF's cross-motion to recall the mandate and allow rehearing on jurisdiction over Engenia.

Scott Garrison

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Office of General Counsel
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From: Hathaway, Margaret <Hathaway.Margaret@epa.gov>
Sent: Wednesday, July 01, 2020 11:35 AM
To: Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Cc: Kenny, Daniel <Kenny.Dan@epa.gov>; Schmid, Emily <Schmid.Emily@epa.gov>; Rosenblatt, Daniel <Rosenblatt.Dan@epa.gov>
Subject: Dicamba Litigation Timeline

Hello Michele and Scott:

Ed Messina has requested a timeline of recent dicamba litigation events for a meeting he has coming up on July 9th. We already have a list (copied below) covering June 3rd – June 16th, but does OGC have an expanded list that is current?

If not, could you please assist RD in fleshing out a summary of that also includes the more recent actions? Mike Goodis has been forwarding the various court documents to RD, but I'm unsure how to best summarize these legal actions, and may be missing some steps as well.

Thank you,
Meg

June 3rd through June 16th Dicamba Litigation Timeline

On June 3, 2020 in the case entitled *National Family Farm Coalition, et. al. versus EPA*, the United States Court of Appeals for the Ninth Circuit Court (based in San Francisco, California) ruled that EPA's approval of three over-the-top dicamba herbicides (XtendiMax, Engenia and FeXapan) for genetically modified crops such as soybeans be vacated (or ended) immediately.

On June 8, 2020, EPA issued a cancellation order providing farmers with needed clarity following the Ninth Circuit's decision. The order outlines limited and specific circumstances under which existing stocks of the three affected dicamba products can be used, through July 31, 2020.

On June 11, 2020, the NGO's who had originally filed the complaint in this case (National Family Farm Coalition, Center for Biological Diversity, and Center for Food Safety) filed an emergency motion with the Ninth Circuit asking that the court enforce their original vacating order and find EPA in contempt.

On June 16, 2020, the Department of Justice, on behalf of EPA, filed its response to the NGO's request, arguing that EPA had complied with the court's order in treating the products as unregistered. The cancellation order is a separate legal action, that consistent with the Court's order, and does not allow distribution and sale of these products, except in limited circumstances. The cancellation order also bans use of existing stocks after July 31, 2020, and requires that any use of existing stocks prior to July 31, 2020 follow previously-approved label conditions.

Margaret Hathaway (Meg)
Senior Regulatory Specialist
U.S. Environmental Protection Agency
OCSPP: Office of Pesticide Programs
Registration Division – Herbicide Branch
hathaway.margaret@epa.gov

(703) 305-5076

Message

From: Garrison, Scott [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F3BA15187A464688A839A843B7B59CA0-SGARRISO]
Sent: 7/15/2020 6:16:10 PM
To: Green, Noelle [Green.Noelle@epa.gov]; Knorr, Michele [Knorr.Michele@epa.gov]
CC: Koch, Erin [Koch.Erin@epa.gov]
Subject: RE: Senior Staff Meeting Notes - June 4, 2020

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One update: 960 F.3d 1120

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Green, Noelle <Green.Noelle@epa.gov>
Sent: Wednesday, July 15, 2020 2:09 PM
To: Garrison, Scott <Garrison.Scott@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>
Cc: Koch, Erin <Koch.Erin@epa.gov>
Subject: RE: Senior Staff Meeting Notes - June 4, 2020

Thank you, Scott! Much appreciated.

Noelle Green
Attorney-Advisor
Cross-Cutting Issues Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, Northwest
Washington, DC 20460
(202) 564-1236
green.noelle@epa.gov

From: Garrison, Scott <Garrison.Scott@epa.gov>
Sent: Wednesday, July 15, 2020 2:04 PM
To: Knorr, Michele <knorr.michele@epa.gov>; Green, Noelle <Green.Noelle@epa.gov>
Cc: Koch, Erin <Koch.Erin@epa.gov>
Subject: RE: Senior Staff Meeting Notes - June 4, 2020

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Here's an expanded summary of the decision:

On June 3, 2020, the Ninth Circuit Court of Appeals issued an adverse decision in *National Family Farm Coalition, et. al., v. EPA*, No. 19-70115 (aka Dicamba II), ordering the immediately effective vacatur of three pesticide registrations for post-emergence use of dicamba on crops genetically engineered to be tolerant to that pesticide. The Court found that EPA's October 31, 2018 decision for the three dicamba products was not based on substantial evidence in that "EPA substantially understated risks that it acknowledged and failed entirely to acknowledge other risks." Slip op. at 55. The Court's decision was based solely on the FIFRA decision not being supported by substantial evidence, and did not reach the ESA issues.

The Court found that EPA failed to take into account the anticompetitive and monopolistic economic effects of the registration, the severe strain on social relations in farming communities where the new dicamba herbicides are being applied, and the difficulty in complying with label requirements and the impacts of the consequent misuse. The Court also found that EPA failed to adequately consider the extent of dicamba damage and reports of dicamba damage, and inappropriately relied on the registrant's estimates and representations. The Court concluded these "fundamental flaws in the EPA's analysis are so substantial that it is exceedingly unlikely that the same rule would be adopted on remand" (slip op. at 55, interal quotation marks omitted), and that immediate vacatur was therefore appropriate.

The Court found jurisdiction in the Court of Appeals was appropriate under FIFRA because the challenged 2018 registration decision was issued by EPA following a notice-and-comment period for a related 2016 registration decision on Beyer/Monsanto's XtendiMax product. Moreover, the Court held that the 2016 "public hearing" was sufficient for jurisdiction over Corteva/du Pont's FeXapan and BASF's Engenia because the record, and particularly the registration decision and its risk benefits analyses, concerned post-emergent dicamba use generally and was not registrant-specific. Accordingly, the Court ordered the immediately effective vacatur of the registrations of all three products.

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Tuesday, July 14, 2020 1:13 PM
To: Green, Noelle <Green.Noelle@epa.gov>; Wakefield, Benjamin J. <wakefield.benjamin@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Subject: RE: Senior Staff Meeting Notes - June 4, 2020

This is actually Scott's dicamba case. Scott – not sure if you have time to provide something to Noelle by Thursday.

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Green, Noelle <Green.Noelle@epa.gov>
Sent: Tuesday, July 14, 2020 1:06 PM
To: Wakefield, Benjamin J. <wakefield.benjamin@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>
Subject: FW: Senior Staff Meeting Notes - June 4, 2020

Hi Ben and Michele,

I would like to include an article on the *National Family Farm Coalition* decision in the CCILO Report. Do either of you have a more detailed summary that I could include? My goal is to issue the report by Thursday, so if you don't already have something handy or don't have the bandwidth to draft something quickly, please don't worry about it.

Thank you,

Noelle Green

Attorney-Advisor
Cross-Cutting Issues Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, Northwest
Washington, DC 20460
(202) 564-1236
green.noelle@epa.gov

From: Epp, Timothy <Epp.Timothy@epa.gov>
Sent: Thursday, June 11, 2020 8:42 AM
To: OGC HQ Only <OGC_HQ_Only@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Subject: Senior Staff Meeting Notes - June 4, 2020

David Fotouhi chaired the meeting.

PTSLO (Joe Cole) reported on *National Family Farm Coalition, et al., v. EPA*. On June 3, 2020, the Ninth Circuit Court of Appeals issued an adverse decision in *National Family Farm Coalition, et al., v. EPA*, No. 19-70115 (aka Dicamba II), ordering the immediately effective vacatur of three pesticide registrations for post-emergence use of dicamba on crops genetically engineered to be tolerant to that pesticide. The Court found that EPA's October 31, 2018 decision for the three dicamba products was not based on substantial evidence in that EPA substantially understated risks that it acknowledged and failed to acknowledge other risks. The Court's decision is based solely on the FIFRA decision not being supported by substantial evidence, and did not reach ESA issues. OGC is reviewing the decision.

GLO (Wendy Blake) reported on a favorable decision (see attached – "30-Mem. Op.") in *California Air Resources Board (CARB) v. EPA, et al.*, 19-cv-00965 (D.D.C.). Judge Colleen Kollar-Kotelly denied CARB's motion for summary judgment and granted EPA and NHTSA's motion for summary judgment. The Court's decision addressed CARB's claims that EPA improperly withheld two emails and NHTSA improperly withheld two draft reports under Exemption 5 of FOIA, deliberative process privilege, and CARB's claim that NHTSA did not conduct an adequate search in response to one part of CARB's request. The Court found that EPA and NHTSA's withholdings are protected by Exemption 5, deliberative process, and that NHTSA conducted an adequate search.

First, the Court found that CARB's request, although it could have "benefitted from more precise language," was proper under FOIA and required EPA and NHTSA to comply with FOIA procedures in response.

Second, the Court found that EPA and NHTSA had not acted in bad faith. CARB argued that EPA and NHTSA had falsely represented the agency's pre-litigation interpretation of CARB's request and had given CARB contradictory representations on a particular issue. The Court disagreed with CARB, holding that the agencies' pre-litigation conduct actually suggested a good-faith "attempt to provide Plaintiff with the requested information," and that the alleged contradictory representations were not in fact contradictory.

Third, the Court found that the withheld portions of EPA's emails were "rightfully withheld." The Court based its conclusion on two independent grounds. First, the "withheld information is not responsive" to CARB's request. The Court explained that EPA had reasonably assumed these emails were responsive to CARB's request, but when CARB clarified its request during the litigation, it became clear that they were not responsive. As such, "the information is rightfully withheld as not responsive." Second, the Court held that "even if the redacted information was responsive...the information was rightly withheld as predecisional and deliberative." The Court confirmed that the publication of the final SAFE Vehicles rule did not affect the emails' pre-decisional quality or potential harm from their release.

The Court also found the NHTSA's search was adequate, and that NHTSA's draft reports were appropriately withheld as deliberative. The Court did not address EPA's withholding of the OMEGA or ALPHA models, as that issue was not briefed in light of the then-ongoing litigation in the Second Circuit.

Seth Buchsbaum is the contact on this case for OGC. For any questions, he can be reached at 202-564-2484.

Region 2 (Eric Schaaf) reported on the following:

Hudson River PCBs Site – Property Transfer (UPDATE)

On June 3, 2020, the HQ Office of Administration signed the deed transferring the access road property used for the Hudson River PCBs Superfund Site cleanup from EPA to the Warren & Washington County Industrial Development Agency. The transfer of EPA's ownership interest supports community efforts to redevelop the location of General Electric's former sediment processing facility, located in the town of Fort Edward, New York.

Supreme Court upholds PROMESA

On June 1, 2020, the U.S. Supreme Court issued a decision (see attached "Aurelius") in the case *Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC, et al.*, No. 18-1334, in which it upheld the validity of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), 48 U.S.C. § 2101, *et seq.*, in the face of a constitutionality challenge. The First Circuit Court of Appeals had held that the method that PROMESA provides for the selection of members of the Financial Oversight and Management Board violated the Appointments Clause of the U.S. Constitution because the statute does not provide for the appointment of the seven voting members of the Board to be submitted to the U.S. Senate for confirmation. Through PROMESA, Congress authorized the Oversight Board to file for bankruptcy on behalf of Puerto Rico or its instrumentalities, supervise and modify Puerto Rico's laws and budget, and gather evidence and conduct investigations in support of these efforts. In its June 1, 2020 ruling, the Supreme Court reversed the First Circuit's decision. The Court held that the Constitution's Appointments Clause does not restrict the appointment or selection of the Oversight Board members, because the Board only exercises local, territorial authority, and its members therefore are not officers of the United States. A copy of the decision is attached.

Notice of Intent to Sue received regarding Chesapeake Bay TMDL

In a letter dated May 20, 2020, the state of Delaware notified EPA of its intent to sue EPA to challenge its assessment of New York and Pennsylvania's Phase III Watershed Implementation Plan (WIP) for the Chesapeake Bay TMDL. Delaware argues that EPA failed to carry out its non-discretionary duty under Section 117(g) of the Clean Water Act to ensure that NY and PA develop a management plan (a Phase III WIP) to achieve and maintain the nutrient reductions set forth in the Chesapeake Bay TMDL. This is the third notice of intent to sue received on EPA's assessment of the Phase III WIPs.

Notice of Intent to Sue received regarding Failure to Submit SIPs

By letter dated May 28, 2019, the Center for Biological Diversity, Center for Environmental Health, and Sierra Club provided a notice of intent to sue (NOI) pursuant to 42 U.S.C. 7604(b)(2) for the alleged failure of the Administrator to issue a finding that Missouri, Guam, Indiana, Louisiana, and Puerto Rico failed to submit nonattainment state implementation plans (SIPs) within 18 months of the effective dates of two EPA final rules, as applicable: “Air Quality Designations for the 2010 Sulfur Dioxide (SO₂) Primary National Ambient Air Quality Standard (NAAQS),” 78 Fed. Reg. 47,191 (Aug. 5, 2013); and “Air Quality Designations for the 2010 Sulfur Dioxide (SO₂) Primary National Ambient Air Quality Standard – Round 3,” 83 Fed. Reg. 1,098 (Jan. 9, 2018). The NOI states that, pursuant to 42 U.S.C. 7514(a), Puerto Rico was required to submit a final nonattainment SIP by October 9, 2019, and has failed to do so; the SIPs must meet the requirements of 42 U.S.C. 7502, 7514-7514a, and provide for attainment of the NAAQS as expeditiously as practicable, but no later than five years from the effective dates of the applicable rules.

Region 3 (Cecil Rodrigues) reported on the attached Anacostia trash TMDL discovery order.

Tim

Timothy R. Epp

Associate General Counsel | [National FOIA Office](#)
U.S. Environmental Protection Agency | Office of General Counsel
1200 Pennsylvania Avenue, N.W. (MC 2310A)
Washington, D.C. 20460 | WJCN 7309B
Phone (202) 564-2830 | epp.timothy@epa.gov



National FOIA Office
EPA Office of General Counsel

Message

From: Garrison, Scott [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F3BA15187A464688A839A843B7B59CA0-SGARRISO]
Sent: 6/4/2020 6:04:09 PM
To: Knorr, Michele [Knorr.Michele@epa.gov]
Subject: reg no's

Confidential communication for internal deliberations only. Attorney-client privilege. Do not distribute outside U.S. Government.

Scott Garrison
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U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Garrison, Scott
Sent: Thursday, June 04, 2020 1:39 PM
To: Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Knorr, Michele <Knorr.Michele@epa.gov>
Cc: Fotouhi, David <fotouhi.david@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>
Subject: RE: For OGC/Rick/Carrie Urgent Review: Dicamba statement; DDL: 1:30 PM

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Xtendimax with Vaporgrip Technology (EPA Reg. No. 524-617), Engenia – (EPA Reg. No. 7969-345), FeXapan – (EPA Reg. No. 352-913)

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Garrison, Scott
Sent: Thursday, June 04, 2020 1:32 PM
To: Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Knorr, Michele <Knorr.Michele@epa.gov>
Cc: Fotouhi, David <fotouhi.david@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>
Subject: RE: For OGC/Rick/Carrie Urgent Review: Dicamba statement; DDL: 1:30 PM

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See my edits below. I'll look up the registration numbers and get them to you shortly.

Ex. 5 AC/DP

Ex. 5 AC/DP

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Goerke, Ariadne <Goerke.Ariadne@epa.gov>
Sent: Thursday, June 04, 2020 12:58 PM
To: Cole, Joseph E. <cole.josephe@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>
Cc: Fotouhi, David <Fotouhi.David@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>
Subject: FW: For OGC/Rick/Carrie Urgent Review: Dicamba statement; DDL: 1:30 PM

In trying to make this as efficient as possible, can the PTSLO team edit the statement below to add the registrations and any additional edits necessary, and send that to David and Kamila, ideally in the next 30 minutes?

Is there agreement this should be reviewed by DOJ? If so, I can send it to career OPA staff or David can send it to his counterparts. Please let me know.

Ariadne Goerke
Acting Associate Deputy General Counsel
U.S. Environmental Protection Agency
202-564-5471 (office)
202-505-0535 (cell)

From: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>
Sent: Thursday, June 4, 2020 12:44 PM
To: Dennis, Allison <Dennis.Allison@epa.gov>; Keigwin, Richard <Keigwin.Richard@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>
Cc: Bolen, Derrick <bolen.derrick@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
Subject: RE: For OGC/Rick/Carrie Urgent Review: Dicamba statement; DDL: 1:30 PM

+ David & Michele

From: Dennis, Allison <Dennis.Allison@epa.gov>

Sent: Thursday, June 4, 2020 12:41 PM

To: Keigwin, Richard <Keigwin.Richard@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>

Cc: Bolen, Derrick <bolen.derrick@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>

Subject: For OGC/Rick/Carrie Urgent Review: Dicamba statement; DDL: 1:30 PM

All- looking for your edits NLT 1:30 pm today. The Administrator will need to review. Will DOJ need to review as well? -Allison

EPA Administrator Wheeler Responds to Ninth Circuit Vacatur of Dicamba Registrations

WASHINGTON—Yesterday, the U.S. Ninth Circuit Court of Appeals issued an order vacating the U.S. Environmental Protection Agency's (EPA) registration of dicamba, which is a valuable pest control tool for America's farmers. EPA Administrator Andrew Wheeler issued the following statement in response:

We are disappointed with the Court's decision and agree with the Court that this order will place a great hardship on America's farmers, especially ~~as we enter~~ with the 2020 growing season well underway.

Ex. 5 AC/DP

Allison Dennis
Communications Director
Office of Chemical Safety and Pollution Prevention
Desk: (202) 564-1985; Cell: (202) 257-5629
Follow OCSP on Twitter: [@EPACChemSafety](https://twitter.com/EPACChemSafety)

Message

From: Garrison, Scott [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F3BA15187A464688A839A843B7B59CA0-SGARRISO]
Sent: 10/25/2020 2:54:50 PM
To: Knorr, Michele [Knorr.Michele@epa.gov]; Cole, Joseph E. [cole.josephe@epa.gov]
CC: Koch, Erin [Koch.Erin@epa.gov]
Subject: RE: AEZ & Dicamba Press Releases

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I added comments to the q&a... only tried to hit the huge issues, did not address some minor errors.

Scott Garrison
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Office of General Counsel
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202-564-4047
garrison.scott@epa.gov

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Sunday, October 25, 2020 10:31 AM
To: Cole, Joseph E. <cole.josephe@epa.gov>
Cc: Garrison, Scott <Garrison.Scott@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>
Subject: Re: AEZ & Dicamba Press Releases

I appreciate it. When we look at the decision today we will flag any adjuvant v agent areas. Let us know if you see anything else that needs fixing or explanation. Thanks

Michele Knorr
OGC
202-564-5631

On Oct 25, 2020, at 10:24 AM, Cole, Joseph E. <cole.josephe@epa.gov> wrote:

It wasn't clear from Allison's email if they were open or not. I've asked her (and cc'd Ed).

Joe

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Sunday, October 25, 2020 10:21 AM
To: Cole, Joseph E. <cole.josephe@epa.gov>
Cc: Garrison, Scott <Garrison.Scott@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>
Subject: Re: AEZ & Dicamba Press Releases

Are the press materials still open or have we lost the opportunity? I don't want to comment on something that will not be taken. The decision was to go with adjuvant and OPP is supposed to make sure that is consistent.

Michele Knorr
OGC
202-564-5631

On Oct 25, 2020, at 10:16 AM, Cole, Joseph E. <cole.josephe@epa.gov> wrote:

I noticed a couple things in the docs in the Sharepoint that I wanted to bring to your attention for consideration/sharing with OPP:

- in a couple places, the documents use VRA, but the "A" stands for agent in the press documents; should they be consistent with the decision document's use of "adjuvant"? The decision document has a little inconsistency with the use of agent/adjuvant, but not sure if it matters there either.
- in Q&A #3, the second and third paragraph appear to be repeated at the end of the paragraph; is that intentional?

Joe

From: Dennis, Allison <Dennis.Allison@epa.gov>
Sent: Friday, October 23, 2020 1:31 PM
To: Cole, Joseph E. <cole.josephe@epa.gov>
Subject: FW: AEZ & Dicamba Press Releases

Latest versions of the press materials below.

I know OGC staff (michelle know, Scott G) were involved in the review of these materials.

The Q&As, TPs, etc, for both announcements can be found here: https://usepa-my.sharepoint.com/:f/g/personal/siedschlag_gregory_epa_gov/EvuigEaSfqNMINzGGHJ5WaABGyjSkOndEXsM_mZrfuFIrg?c=fekIJV

From: Dunn, Alexandra <dunn.alexandra@epa.gov>
Sent: Friday, October 23, 2020 1:24 PM
To: Dennis, Allison <Dennis.Allison@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Striegel, Megan <Striegel.Megan@epa.gov>; Block, Molly <block.molly@epa.gov>
Subject: RE: AEZ & Dicamba Press Releases

Looks oK.

Alexandra Dapolito Dunn, Esq.
Assistant Administrator

Office of Chemical Safety and Pollution Prevention
US Environmental Protection Agency
Washington, DC

From: Dennis, Allison <Dennis.Allison@epa.gov>
Sent: Friday, October 23, 2020 12:52 PM
To: Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Striegel, Megan <Striegel.Megan@epa.gov>; Block, Molly <block.molly@epa.gov>
Cc: Dunn, Alexandra <dunn.alexandra@epa.gov>
Subject: RE: AEZ & Dicamba Press Releases

+ Alex

From: Drinkard, Andrea <Drinkard.Andrea@epa.gov>
Sent: Friday, October 23, 2020 12:52 PM
To: Dennis, Allison <Dennis.Allison@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Striegel, Megan <Striegel.Megan@epa.gov>; Block, Molly <block.molly@epa.gov>
Subject: AEZ & Dicamba Press Releases

Here's what I'll be submitting to Mandy/Michael later today. These versions include approved quotes from Bill. Please let me know ASAP if you have any last minute edits.

EPA Announces 2020 Dicamba Registration Decision

XXX—At an event in X, U.S. Environmental Protection Agency (EPA) Administrator Andrew Wheeler announced the next step for dicamba registration. EPA is approving new registrations for two dicamba products and extending the registration of an additional dicamba product. All three registrations include stringent control measures to protect the environment, including non-target plants, animals, and other crops not tolerant to dicamba.

“With today’s decision, farmers now have the certainty they need to make plans for their 2021 growing season,” **said EPA Administrator Andrew Wheeler.** “After reviewing substantial amounts of new information, conducting scientific assessments based on the best available science, and carefully considering input from stakeholders we have reached a resolution that’s good for our farmers, our economy, and our environment.”

Through today’s action, EPA approved new registrations for two “over the top” (OTT) dicamba products—XtendiMax with VaporGrip Technology and Engenia Herbicide— and extended the registration for an additional OTT dicamba product, Tavium plus VaporGrip Technology. These registrations are only for use on dicamba-tolerant (DT) cotton and DT soybeans and will expire in 2025, providing certainty to American agriculture for the upcoming growing season and beyond.

To manage off-site movement of dicamba, EPA’s 2020 registration features important control measures, including:

- Requiring an approved pH-buffering agent (also called a Volatility Reduction Agent or VRA) be tank mixed with over-the-top dicamba products prior to all applications to control volatility;
- More than doubling the size of required downwind buffers compared to the 2018 OTT dicamba labels; in counties where endangered species may exist, the required buffers are even bigger;
- Prohibiting OTT application of dicamba on soybeans after June 30 and cotton after July 30;
- Simplifying the label and use directions so that growers can more easily determine when and how to properly apply dicamba; and

Ex. 5 Deliberative Process (DP)

The 2020 registration labels also provide new flexibilities for growers and states. For example, there are opportunities for growers to reduce the downwind spray buffer for soybeans through use of certain approved hooded sprayers as an alternative control method. EPA also recognizes and supports the important authority FIFRA section 24 gives the states for issuing locally appropriate regulations for pesticide use. If a state wishes to expand the federal OTT uses of dicamba to better meet special local needs, the Agency will work with them to support their goals.

This action was informed by input from state regulators, grower groups, academic researchers, pesticide manufacturers, and others. EPA reviewed substantial amounts of new information and conducted scientific assessments based on the best available science, including making an Effect Determination under the Endangered Species Act (ESA). With this information and input, EPA has concluded that these registration actions meet Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) registration standards. EPA believes that these new analyses address the concerns expressed in regard to EPA's 2018 dicamba registrations in the June 2020 U.S. Court of Appeals for the Ninth Circuit. After completing its Effects Determinations for dicamba uses on DT cotton and soybeans, EPA concluded that with the control measures now required on labels, these actions do not affect endangered or threatened species.

Ex. 5 AC/DP

To view the final registration of the dicamba products, visit docket EPA-HQ-OPP-2020-0492 at [regulations.gov](https://www.regulations.gov).

Background

The United States is the world's leading soybean producer and second leading soybean exporter and also serves as the world's third-largest cotton producer and the leading cotton exporter. Today, there are limited cost-effective options to control herbicide-resistant weeds affecting these commodities. In 2018, approximately 41 percent of U.S. soybean acreage was planted with dicamba-tolerant (DT) seed and almost 70 percent of U.S. cotton acreage was planted with DT seed in 2019. Relative to alternative herbicide programs, postemergence dicamba may reduce weed control costs for some growers, possibly by as much as \$10 per acre, or over five percent of net operating revenue, not accounting for all measures growers will have to take to control off-field movement of dicamba.

Following reports of damage resulting from the off-site movement of dicamba, EPA amended the dicamba registration labels in 2017 and in 2018. In June 2020, the U.S. Court of Appeals for the Ninth Circuit vacated the registrations for three dicamba products: XtendiMax with VaporGrip Technology, Engenia Herbicide, and DuPont FeXapan Herbicide. As a result of the Court’s decision, EPA issued cancellation orders outlining limited circumstances under which existing stocks of the three affected products could be distributed and used until July 31, 2020.

.....

EPA Finalizes Improvements to Pesticide Application Exclusion Zone Requirements

Final rule clarifies and simplifies application exclusion zone requirements while maintaining important worker protections

XXX— Today, at an event in X, U.S. Environmental Protection Agency (EPA) Administrator Andrew Wheeler will be announcing that the agency has finalized important improvements to requirements for the pesticide application exclusion zone (AEZ) – the area surrounding pesticide application equipment that exists only during outdoor production pesticide applications. EPA’s targeted changes improve the enforceability and workability of the AEZ requirements, decrease regulatory burdens for farmers, and maintain critical worker protections. Today’s revisions are consistent with the 2018 Pesticide Registration Improvement Act (PRIA). The AEZ requirements are part of EPA’s agricultural Worker Protection Standard (WPS) regulations.

“Since day one, the Trump Administration has been committed to protecting our farmworkers and”

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP) ” said EPA Administrator Andrew Wheeler.

“The changes to the AEZ requirements make it easier to ensure people near our nation’s farms are protected while giving farm owners and their families greater flexibility.”

This final action balances the input EPA received from a wide range of stakeholders during the proposed action’s 90-day comment period. EPA has clarified and simplified the AEZ requirements based in part on input from state pesticide regulatory agencies and agricultural stakeholders after the adoption of the 2015 WPS rule. Consistent with PRIA, EPA is only implementing changes related to the AEZ requirements in the WPS. These targeted changes include:

- AEZ requirements only apply within the boundaries of the agricultural establishment, removing off-farm responsibilities that were difficult for state regulators to enforce.
- Immediate family members of farm owners are now exempted from all aspects of the AEZ requirements. Farm owners and their immediate family are now able to shelter in place inside closed buildings, giving farm owners and immediate family members flexibility to decide whether to stay on-site during pesticide applications, rather than compelling them to leave even when they feel safe remaining.

- New clarifying language has been added so that pesticide applications that are suspended due to individuals entering an AEZ may be resumed after those individuals have left the AEZ.
- Simplified the criteria to determine whether pesticide applications are subject to the 25- or 100-foot AEZ.

No changes were made to the “Do Not Contact” provision that prohibits a handler/applicator and the handler’s employer from applying a pesticide in such a way that it contacts workers or other persons directly or through drift.

To read the rule in full, please visit: [*insert link*](#)

Background

The original WPS regulation was enacted in 1992 under EPA’s Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorities to protect farm workers from pesticide exposures in production agriculture. The WPS requires owners and employers on agricultural establishments and commercial pesticide-handling establishments to protect employees on farms, forests, nurseries and greenhouses from occupational exposure to agricultural pesticides.

In 2015, EPA finalized various significant revisions to the 1992 WPS. Among the 2015 revisions was a new provision requiring agricultural employers to keep non-applicator workers and all other individuals out of an area called the “application exclusion zone” (AEZ) during outdoor pesticide applications. The AEZ is the area surrounding pesticide application equipment that exists only during outdoor production pesticide applications. The AEZ will remain 25-feet in all directions for ground pesticide applications, and 100-feet in all directions for outdoor aerial, air blast, air-propelled, fumigant, smoke, mist and fog pesticide applications.

The initial intent of the AEZ was to supplement existing WPS provisions for farm workers to better protect them and other on-farm persons that could be contacted by pesticides. However, state regulators expressed concerns with enforcing the complex AEZ requirements, farm owners expressed concerns with applying and enforcing pesticide regulations on their own property, and members of EPA’s Pesticide Program Dialogue Committee expressed numerous other concerns.

Andrea Drinkard
Senior Advisor
EPA Office of Public Affairs
Desk: 202.564.1601
Cell: 202.236.7765

Message

From: Garrison, Scott [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F3BA15187A464688A839A843B7B59CA0-SGARRISO]
Sent: 4/29/2020 6:18:05 PM
To: Koch, Erin [Koch.Erin@epa.gov]; Perlis, Robert [Perlis.Robert@epa.gov]; Cole, Joseph E. [cole.josephe@epa.gov]
CC: Knorr, Michele [Knorr.Michele@epa.gov]
Subject: Dicamba: Briefing ordered in 14 days re which products are w/in Court's jurisdiction

Confidential communication for internal deliberations only. Attorney-client privilege. Do not distribute outside EPA.

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Sent: Wednesday, April 29, 2020 2:13 PM
To: Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Perlis, Robert <Perlis.Robert@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; O'Donnell, Jessica (ENRD) <Jessica.O'Donnell@usdoj.gov>; Meghan Greenfield <Meghan.Greenfield@usdoj.gov>
Cc: Grosko, Brett (ENRD) <Brett.Grosko@usdoj.gov>
Subject: FW: 19-70115 National Family Farm Coalition, et al v. USEPA, et al "Order Filed (From Chambers)"

Well, the Court identified the problem about what actions are under review. We have 14 days to respond with a brief addressing the scope of Petitioners' challenge.

Sarah

From: ca9_ecfnoticing@ca9.uscourts.gov <ca9_ecfnoticing@ca9.uscourts.gov>
Sent: Wednesday, April 29, 2020 2:08 PM
To: Buckley, Sarah (ENRD) <SBuckley@ENRD.USDOJ.GOV>
Subject: 19-70115 National Family Farm Coalition, et al v. USEPA, et al "Order Filed (From Chambers)"

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing.

United States Court of Appeals for the Ninth Circuit

Notice of Docket Activity

The following transaction was entered on 04/29/2020 at 11:06:35 AM PDT and filed on 04/29/2020

Case Name: National Family Farm Coalition, et al v. USEPA, et al
Case Number: 19-70115
Document(s): Document(s)

Docket Text:

Filed order (MICHAEL DALY HAWKINS, M. MARGARET MCKEOWN and WILLIAM A. FLETCHER): On October 31, 2018, EPA signed a decision announcing that it “will be granting requests by Bayer CropScience (formerly Monsanto Company), Corteva (formerly DuPont), and BASF to amend their existing conditional registrations that contain expiration dates of November 9, 2018, and December 20, 2018, respectively.” ER 3. Pursuant to this decision, EPA issued three conditional registrations. On November 1, 2018, EPA issued a conditional registration to Bayer CropScience for its “M1768 Herbicide” [“XtendiMax With VaporGrip Technology”]. ER 65, 81. On November 2, 2018, EPA issued a conditional registration to BASF for its “Engenia Herbicide.” ER 167. On November 5, 2018, EPA issued a conditional registration to Corteva for its “DuPont FeXapan Herbicide.” ER 121. In a petition to our Court, National Family Farm Coalition et al. challenged the decision of EPA. Petitioners’ brief begins: “This petition seeks review of the October 31, 2018, decision by the United States Environmental Protection Agency (EPA) to continue the new uses registrations of the pesticide dicamba on dicambaresistant cotton and soybean. . . . Petitioners timely filed this petition for review.” Blue Brief at 1. Petitioners write further: “This case concerns a pesticide Intervenor Monsanto developed, ‘XtendiMax with VaporGrip Technology’ (XtendiMax), containing the weed-killing active ingredient dicamba. ER0003–4.” Id. at 2. They append a footnote to this sentence: “The registration also covers the competitor dicamba varieties approved by EPA for the same uses. ER0004–5, tbl.2; ER121–ER 0210. We use XtendiMax for simplicity.” Id. at 2, n.4. EPA writes in its brief: “Although not at issue here, EPA has issued registrations for two other dicamba products for the same uses, Engenia and FeXapan. EPA Reg. Nos. 7969-345 and 352-913. EPA’s 2018 registration action also amended the Engenia and FeXapan registrations.” Red Brief at 12–13, n.3. The parties thus appear to disagree as to the scope of the challenge before us. As we read the petitioners’ brief, they seek to challenge the entirety of the registration decision promulgated by the EPA on October 31, 2018, approving conditional registrations for post-emergent application of dicamba herbicides manufactured by Bayer CropScience, Corteva, and BASF. As we read EPA’s brief, it contends that petitioners’ challenge extends only to the conditional registration for post-emergent application of the dicamba herbicide manufactured by Bayer CropScience. The briefing now before this Court does little more than to indicate disagreement between the parties. The Court would be assisted by more sustained briefing on the scope of petitioners’ challenge. Within fourteen days of the issuance of this order, the parties, including Intervenor Bayer CropScience, are directed to provide simultaneous letter briefs addressing the scope of petitioners’ challenge. The briefs are to be no longer than ten pages of text, double-spaced, in size 14 font. [11675470] (AF)

Notice will be electronically mailed to:

Richard P. Bress, Attorney
Sarah A. Buckley, Trial Attorney
Jesse A. Buss
Mr. John Brett Grosko, Trial Attorney
Mr. George Andreas Kimbrell, Attorney
Jon Michael Lipshultz
Ms. Stephanie M. Parent, Attorney
Philip J. Perry, Attorney
Mr. Andrew Prins
Claire Tonry
Ms. Amy Luisa Van Saun, Staff Attorney

Stacey L. VanBelleghem
Ms. Sylvia Shih-Yau Wu, Attorney

Case participants listed below will not receive this electronic notice:

USEPA - Agency Representative
USEPA - U.S. ENVIRONMENTAL PROTECTION AGENCY
1101A
1200 Pennsylvania Ave., NW
Washington, DC 20460

The following document(s) are associated with this transaction:

Document Description: Main Document

Original Filename: 19-70115 NFF order supp briefing FILE.pdf

Electronic Document Stamp:

[STAMP acecfStamp_ID=1106763461 [Date=04/29/2020] [FileNumber=11675470-0]

[1e64957da47a386301b116927feb82229f135e7267b0edfc7b8c4dd444c2732ed06d6a96daafb0b00b2b647b9876
deeba55340eb8b8e198297f3f506e16428bb]]

Message

From: Garrison, Scott [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F3BA15187A464688A839A843B7B59CA0-SGARRISO]
Sent: 6/9/2020 9:40:37 PM
To: Dennis, Allison [Dennis.Allison@epa.gov]; Dunn, Alexandra [dunn.alexandra@epa.gov]; Meadows, Carrie Vicenta [Meadows.CarrieVicenta@epa.gov]; Keigwin, Richard [Keigwin.Richard@epa.gov]; Lis-Coghlan, Kamila [lis-coghlan.kamila@epa.gov]; Knorr, Michele [Knorr.Michele@epa.gov]
CC: Knorr, Michele [Knorr.Michele@epa.gov]; Koch, Erin [Koch.Erin@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Cole, Joseph E. [cole.josephe@epa.gov]; Bolen, Derrick [bolen.derrick@epa.gov]; Messina, Edward [Messina.Edward@epa.gov]; Goodis, Michael [Goodis.Michael@epa.gov]
Subject: RE: UPDATE!

Confidential communication for internal deliberations only. Attorney-client privilege. Do not distribute outside U.S. Government.

I think an "and" is missing. Adding "and" would be consistent with section 2.b. of the order, "Distribution or sale by persons other than the registrant", which allows any person to distribute for the purposes of proper disposal or to facilitate return to the registrant or a registered establishment under contract with the registrant

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Dennis, Allison <Dennis.Allison@epa.gov>
Sent: Tuesday, June 09, 2020 5:16 PM
To: Dunn, Alexandra <dunn.alexandra@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Keigwin, Richard <Keigwin.Richard@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>
Cc: Knorr, Michele <knorr.michele@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Messina, Edward <Messina.Edward@epa.gov>; Goodis, Michael <Goodis.Michael@epa.gov>
Subject: RE: UPDATE!

All, we got the attached media inquiry asking if a word is missing in the cancellation order (see email attached). Is this an easy one we can answer now?

From: Dennis, Allison
Sent: Tuesday, June 09, 2020 2:04 PM
To: Dunn, Alexandra <dunn.alexandra@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Keigwin, Richard <Keigwin.Richard@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Knorr, Michele <Knorr.Michele@epa.gov>
Cc: Knorr, Michele <Knorr.Michele@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Bolen,

Derrick <bolen.derrick@epa.gov>; Messina, Edward <Messina.Edward@epa.gov>; Goodis, Michael <Goodis.Michael@epa.gov>

Subject: RE: UPDATE!

And here are the other q's I've seen from media so far:

- 1) Do you all have any ballpark idea of how much dicamba (at least for the uses in question in the court case and yesterday's EPA order) is actually out there? That, is, when we talk about existing stocks, how much might we be talking about?
- 2) Will this ruling delay or cancel the EPA's new license approval for dicamba this autumn?
- 3) Will the agency need to conduct more of its own testing on dicamba?
- 4) What does the court's decision mean for the legality of planting Xtend products—is there any effect?
- 5) Is Tavium at all affected by this decision? (as it was not specifically listed)
- 6) What does this mean for future registration of dicamba products for over-the-top use?
- 7) Are you notifying state ag departments, have you issued a bulletin notifying users they must cease or is that up to the companies to do?
- 8) Explain what is done to make sure FIFRA is respected when filing registrations for a herbicide.
- 9) What does this ruling mean for 2021 and beyond dicamba registration?
- 10) For farmers or retailers with XtendiMax, Engenia or FeXapan in their inventory what are their options? What would ramifications of application when the registration is vacated be?
- 11) Will this be appealed? Will the agency seek an emergency stay to the decision, as some states are requesting?

From: Dunn, Alexandra <dunn.alexandra@epa.gov>

Sent: Tuesday, June 09, 2020 2:02 PM

To: Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Keigwin, Richard <Keigwin.Richard@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>

Cc: Knorr, Michele <knorr.michele@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Messina, Edward <Messina.Edward@epa.gov>; Goodis, Michael <Goodis.Michael@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>

Subject: RE: UPDATE!

+ Allison Dennis from our press team. This one just came in.

From: Steve Davies <steve@agri-pulse.com>

Sent: Tuesday, June 9, 2020 1:07 PM

To: Press <Press@epa.gov>

Subject: will EPA be issuing further guidance on dicamba?

Despite issuance of the cancellation order, I know many groups and state depts of ag still have questions, such as whether product already paid for by a farmer but in possession of an ag retailer can be used this season. Will EPA be issuing further clarification on what the cancellation order means?

Thank you

Steve Davies, Agri-Pulse

Alexandra Dapolito Dunn, Esq.
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
US Environmental Protection Agency
Washington, DC

From: Dunn, Alexandra
Sent: Tuesday, June 9, 2020 12:43 PM
To: Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Keigwin, Richard <Keigwin.Richard@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Knorr, Michele <Knorr.Michele@epa.gov>
Cc: Knorr, Michele <Knorr.Michele@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Messina, Edward <Messina.Edward@epa.gov>; Goodis, Michael <Goodis.Michael@epa.gov>
Subject: RE: UPDATE!

Another letter and I think this one raises one of the questions we sketched out already.

Alexandra Dapolito Dunn, Esq.
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
US Environmental Protection Agency
Washington, DC

From: Dunn, Alexandra
Sent: Tuesday, June 9, 2020 10:55 AM
To: Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Keigwin, Richard <Keigwin.Richard@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Knorr, Michele <Knorr.Michele@epa.gov>
Cc: Knorr, Michele <Knorr.Michele@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Messina, Edward <Messina.Edward@epa.gov>; Goodis, Michael <Goodis.Michael@epa.gov>
Subject: RE: UPDATE!

Another letter w questions.

From: Dunn, Alexandra
Sent: Tuesday, June 9, 2020 10:52 AM
To: Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Keigwin, Richard <Keigwin.Richard@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Knorr, Michele <Knorr.Michele@epa.gov>
Cc: Knorr, Michele <Knorr.Michele@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Messina, Edward <Messina.Edward@epa.gov>; Goodis, Michael <Goodis.Michael@epa.gov>
Subject: RE: UPDATE!

All, I am going to invite us to a Skype Meeting for 1115 so that we can prioritize the work that needs to happen today, the form it will take, and the timing of it all. Please hop on and hopefully we can decide how to proceed and help one another.

Alexandra Dapolito Dunn, Esq.
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
US Environmental Protection Agency
Washington, DC

From: Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>
Sent: Tuesday, June 9, 2020 10:20 AM

To: Dunn, Alexandra <dunn.alexandra@epa.gov>; Keigwin, Richard <Keigwin.Richard@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>
Cc: Knorr, Michele <knorr.michele@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Messina, Edward <Messina.Edward@epa.gov>; Goodis, Michael <Goodis.Michael@epa.gov>
Subject: RE: UPDATE!

I think these all go back to the same question—What constitutes a sell. I.e. if a product has been contracted verbally or in writing to a farmer OR a commercial applicator, but not yet paid for, is there an issue with this product being transferred. So I think that also gets to Cotton's question of whether or not ONLY commercial applicators can have this product.

From: Dunn, Alexandra <dunn.alexandra@epa.gov>
Sent: Tuesday, June 9, 2020 10:08 AM
To: Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Keigwin, Richard <Keigwin.Richard@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>
Cc: Knorr, Michele <knorr.michele@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Messina, Edward <Messina.Edward@epa.gov>; Goodis, Michael <Goodis.Michael@epa.gov>
Subject: RE: UPDATE!

Carrie, which is the most IMPORTANT question PTSLO should answer now. Is it the cotton one? We have to prioritize.

From: Dunn, Alexandra
Sent: Tuesday, June 9, 2020 10:04 AM
To: Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Keigwin, Richard <Keigwin.Richard@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Knorr, Michele <Knorr.Michele@epa.gov>
Cc: Knorr, Michele <Knorr.Michele@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Messina, Edward <Messina.Edward@epa.gov>; Goodis, Michael <Goodis.Michael@epa.gov>
Subject: RE: UPDATE!

From Cotton, Steve Helmsley:

Unfortunately, emails are blowing up trying to interpret something that you may think is clear.

1. Is it correct that distributors and retailers who are NOT commercial applicators must return or dispose?
2. Is it correct that retailers who ARE commercial applicators can distribute or sell for the purpose of facilitating use? And,
 1. 'Distribute or sell' would mean they can apply it as applicators or sell it to growers to apply?

Alexandra Dapolito Dunn, Esq.
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
US Environmental Protection Agency
Washington, DC

From: Dunn, Alexandra

Sent: Tuesday, June 9, 2020 10:03 AM

To: Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Keigwin, Richard <Keigwin.Richard@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Knorr, Michele <Knorr.Michele@epa.gov>

Cc: Knorr, Michele <Knorr.Michele@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Messina, Edward <Messina.Edward@epa.gov>; Goodis, Michael <Goodis.Michael@epa.gov>

Subject: RE: UPDATE!

Question from CroPLife and Jim Massie:

applicator and distributors need to know whether its "ok" to use the material that is already in the chain of distribution.

Jim Massie
202-841-8037

Alexandra Dapolito Dunn, Esq.
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
US Environmental Protection Agency
Washington, DC

From: Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>

Sent: Tuesday, June 9, 2020 9:53 AM

To: Keigwin, Richard <Keigwin.Richard@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>

Cc: Knorr, Michele <knorr.michele@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Messina, Edward <Messina.Edward@epa.gov>; Goodis, Michael <Goodis.Michael@epa.gov>

Subject: RE: UPDATE!

Apologies to Meg in advance, but just confirming we should forward her all the inquiries.

From: Keigwin, Richard <Keigwin.Richard@epa.gov>

Sent: Tuesday, June 9, 2020 9:24 AM

To: Dunn, Alexandra <dunn.alexandra@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>

Cc: Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Messina, Edward <Messina.Edward@epa.gov>; Goodis, Michael <Goodis.Michael@epa.gov>

Subject: RE: UPDATE!

Meg Hathaway in OPP's Registration Division will be our point for this effort.

From: Keigwin, Richard

Sent: Tuesday, June 09, 2020 8:40 AM

To: Dunn, Alexandra <dunn.alexandra@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Knorr, Michele <Knorr.Michele@epa.gov>

Cc: Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Knorr, Michele <Knorr.Michele@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>

Subject: RE: UPDATE!

OPP will take the lead in getting the Teams site established. Mike Goodis is in the process of identifying someone to work with us in developing the Qs and As.

From: Dunn, Alexandra <dunn.alexandra@epa.gov>

Sent: Tuesday, June 09, 2020 8:18 AM

To: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Keigwin, Richard <Keigwin.Richard@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>

Cc: Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>

Subject: RE: UPDATE!

Michele can you create the teams site pls?

Here's one from the OPA:

Q: Does this mean that the EPA says no more to using the three products at all after July 31? Is EPA not going to appeal this or to clarify, is this part of the appeal?

A (to be properly formatted): We cannot answer the question on appeal. Under EPA's cancellation order, after July 31, the product cannot be used.

Alexandra Dapolito Dunn, Esq.
Assistant Administrator
Office of Chemical Safety and Pollution Prevention

From: Block, Molly

Sent: Monday, June 8, 2020 8:45 PM

To: Dunn, Alexandra <dunn.alexandra@epa.gov>

Cc: Dennis, Allison <Dennis.Allison@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Woods, Andrea <Woods.Andrea@epa.gov>

Subject: Re: Follow Up Press Inquiries

Alexandra Dapolito Dunn, Esq.
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
US Environmental Protection Agency
Washington, DC

From: Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>

Sent: Tuesday, June 9, 2020 7:01 AM

To: Keigwin, Richard <Keigwin.Richard@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>

Cc: Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Garrison,

Scott <Garrison.Scott@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>

Subject: RE: UPDATE!

PTSLO and I are also working on the following:

With regard to paragraph 2(c) (on page 11), if a company is both a commercial applicator and retailer, can it continue to sell product even if some of their individual retail locations don't provide commercial application services?

From: Keigwin, Richard <Keigwin.Richard@epa.gov>

Sent: Tuesday, June 9, 2020 6:45 AM

To: Dunn, Alexandra <dunn.alexandra@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>

Cc: Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>;

Cole, Joseph E. <cole.josephe@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>; Bolen, Derrick

<bolen.derrick@epa.gov>

Subject: RE: UPDATE!

Not sure who is creating the Teams site, but here are some additional q's I received overnight:

- If a retailer is storing product for a grower who may have already bought it, can the grower have it? Or since it is in the retailer's facility, can they not take possession?
- What is the legal status of the movement of product that states allowed between June 3rd and June 8th?

From: Dunn, Alexandra <dunn.alexandra@epa.gov>

Sent: Monday, June 08, 2020 10:00 PM

To: Knorr, Michele <knorr.michele@epa.gov>

Cc: Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Keigwin, Richard <Keigwin.Richard@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Lis-

Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Garrison, Scott

<Garrison.Scott@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>

Subject: Re: UPDATE!

Let's go with a teams site. It will help I think!

Alexandra Dapolito Dunn, Esq.
Assistant Administrator
Office of Chemical Safety & Pollution Prevention
U.S. Environmental Protection Agency
Washington, DC

Sent from my iPhone

On Jun 8, 2020, at 9:28 PM, Bolen, Derrick <bolen.derrick@epa.gov> wrote:

<https://www.aradc.org/news/ara-seeks-clarification-epa-courts-dicamba-decisions-impact-ag-retailers>

Thank you,
Derrick Bolen

On Jun 8, 2020, at 9:14 PM, Meadows, Carrie Vicenta
<Meadows.CarrieVicenta@epa.gov> wrote:

The question of sales is coming up a lot. Apparently there is a unique issue with sales Mississippi that will need clarification.

Sent from my iPhone

On Jun 8, 2020, at 8:30 PM, Knorr, Michele <knorr.michele@epa.gov> wrote:

Consider creating a teams site where we can have a question and answer document loaded to the files function and that way anyone can access it. I can work with folks to create this if you'd like.

Michele Knorr
OGC
202-564-5631

On Jun 8, 2020, at 8:24 PM, Dunn, Alexandra <dunn.alexandra@epa.gov> wrote:

Can we create a document with all the questions? Michele's one drive worked awesome.

Alexandra Dapolito Dunn, Esq.
Assistant Administrator
Office of Chemical Safety & Pollution Prevention
U.S. Environmental Protection Agency
Washington, DC

Sent from my iPhone

On Jun 8, 2020, at 8:15 PM, Keigwin, Richard <Keigwin.Richard@epa.gov> wrote:

So far, I have received the following Qs:

To achieve some clarity we would appreciate answers to the following questions:

1. If the retailer has a commercial applicator business, can that commercial applicator apply product that was in the retail warehouse as of June 3, 2020?
2. If the retailer has inventory in stock that had been purchased by a grower prior to June 3, 2020, but not yet delivered, can that product be applied by a commercial applicator? The order appears to prohibit delivery of that product to the purchasing grower.

Rick Keigwin
Director, Office of Pesticide Programs
U.S. Environmental Protection Agency
Phone: 703-305-7090
Website: <http://www.epa.gov/pesticides>
Sent from my iPhone (Please excuse typos!)

On Jun 8, 2020, at 7:42 PM, Meadows, Carrie Vicenta
<Meadows.CarrieVicenta@epa.gov> wrote:

I have already gotten a call about contracts and selling. It will probably be worth writing something so we are all responding the same.

Sent from my iPhone

On Jun 8, 2020, at 7:23 PM, Dunn, Alexandra <dunn.alexandra@epa.gov> wrote:

Still waiting on a link

Alexandra Dapolito Dunn, Esq.
Assistant Administrator
Office of Chemical Safety & Pollution Prevention
U.S. Environmental Protection Agency
Washington, DC

Sent from my iPhone

On Jun 8, 2020, at 6:45 PM, Dunn, Alexandra <dunn.alexandra@epa.gov> wrote:

T-15 minutes from presser with link in it. Rick, Allison is getting us the link.

Alexandra Dapolito Dunn, Esq.
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
US Environmental Protection Agency
Washington, DC

From: Dunn, Alexandra
Sent: Monday, June 8, 2020 6:44 PM
To: Koch, Erin <Koch.Erin@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>
Cc: Knorr, Michele <Knorr.Michele@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Lis-Coghlan, Kamila <lis-coghlan.kamila@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>;
Keigwin, Richard <Keigwin.Richard@epa.gov>
Subject: RE: UPDATE!

+ Rick in case we use this chain again. I used it and he's not on it! ☺

Alexandra Dapolito Dunn, Esq.
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
US Environmental Protection Agency
Washington, DC

From: Dunn, Alexandra

Sent: Monday, June 8, 2020 6:10 PM

To: Koch, Erin <Koch.Erin@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>

Cc: Knorr, Michele <Knorr.Michele@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Lis-Coghlan, Kamila <liscoghlan.kamila@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>

Subject: UPDATE!

The order is on way for signature and press is done and will link to signed order.

Alexandra Dapolito Dunn, Esq.
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
US Environmental Protection Agency
Washington, DC

Message

From: Garrison, Scott [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F3BA15187A464688A839A843B7B59CA0-SGARRISO]
Sent: 10/23/2020 12:19:48 PM
To: Crawford, Lydia [Crawford.Lydia@epa.gov]
CC: Knorr, Michele [Knorr.Michele@epa.gov]; Koch, Erin [Koch.Erin@epa.gov]
Subject: FW: labels for secondary review
Attachments: 100-01623.20200812C.A21472_PLUS_VAPORGRIP_TECHNOLOGY.AMEND.AUG2020 LC.pdf; 007969-00UTE.20201020.NVA 2020-04-385-0133 LC.pdf; MASTER LABEL_XtendiMax_264-RERN_20201020 LC.pdf

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Thank you Lydia!

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Schmid, Emily <Schmid.Emily@epa.gov>
Sent: Friday, October 23, 2020 8:12 AM
To: Garrison, Scott <Garrison.Scott@epa.gov>
Subject: FW: labels for secondary review

Here are the labels.

From: Crawford, Lydia <Crawford.Lydia@epa.gov>
Sent: Thursday, October 22, 2020 12:19 PM
To: Schmid, Emily <Schmid.Emily@epa.gov>; Kenny, Daniel <Kenny.Dan@epa.gov>; Echeverria, Marietta <Echeverria.Marietta@epa.gov>; Rosenblatt, Daniel <Rosenblatt.Dan@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Cc: Meadows, Sarah <Meadows.Sarah@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>
Subject: labels for secondary review

Here are the labels for Xtendimax, Engenia, and Tavium. Since everyone is busy working on the decision document and registration notices, please get your comments to me by **noon tomorrow** so I can condense and send them to the registrants. Let me know if you have any questions or concerns.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Best,

Lydia Crawford PhD

Biologist | Herbicide Branch | Registration Division

U.S. Environmental Protection Agency | Office of Pesticide Programs

(703) 347-0622 | Crawford.Lydia@epa.gov

Message

From: Garrison, Scott [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F3BA15187A464688A839A843B7B59CA0-SGARRISO]
Sent: 3/27/2020 3:57:23 PM
To: Knorr, Michele [Knorr.Michele@epa.gov]
Subject: RE: 6a2 letter

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No, he just wanted to be sure "individual letter" didn't mean no mention of others. If that had been the intent, I figured someone would have put "[registrant]"... He thought the same, just needed some hand holding. As apparently did I.

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Friday, March 27, 2020 10:52 AM
To: Garrison, Scott <Garrison.Scott@epa.gov>
Subject: 6a2 letter

Here is the language. Is the first sentence confusing with everyone in it? Does appear to say that the registrants have to submit other registrant information?

Michele Knorr
OGC
202-564-5631

Begin forwarded message:

From: "Kenny, Daniel" <Kenny.Dan@epa.gov>
Date: March 27, 2020 at 10:47:08 AM EDT
To: "Knorr, Michele" <Knorr.Michele@epa.gov>
Subject: RE: On phone with Rick

It's the highlighted parts in the passage below:

Any of the information listed below, in the possession of BASF, Bayer (and previously Monsanto), Corteva, Syngenta or any of its consultants, attorneys, or agents, must be reported to EPA under section 6(a)(2):

- 1) Information not already provided to EPA by your company regarding incidents or allegations of non-target plant damage resulting from the use of, or contact with dicamba, including non-lethal effects, which occurred in any country at any time before or after the 2018 registration of the dicamba products (Engenia, EPA Registration No. 7969-345; Fexapan, EPA Registration No. 352-913; Tavium, EPA Registration No. 100-1623; and Xtendimax, EPA Registration No. 524-617). This includes, but is not limited to, complaints, memos, investigations reports, or other documents arising from allegations of such incidents. EPA is particularly interested in information on the location of incidents, the distance between the damage location and any dicamba product applications to label-authorized or unauthorized sites, and any quantitative measurements of damage including visual injury, plant height, and plant yield.
- 2) Any information, including, but not limited to deposition transcripts, responses to interrogatories, expert reports, other discovery documents (including internal company correspondence), and trial exhibits or transcripts, that was generated as a result of or in anticipation of lawsuits filed in any country, indicating that use of or contact with dicamba, directly, or indirectly resulted or may have resulted in adverse effects to non-target plants.
- 3) All studies and associated data (raw and summary) not already provided to EPA by your company, completed or in progress, conducted or sponsored by or for your company^[1] regarding the aforementioned products pertaining to:
 - a) Off-target movement of dicamba, either target or nontarget, through direct application, volatilization, off-site spray drift, potential for long-range transport, runoff, or leaching to groundwater. Include any study summary or test that was discontinued because of unexpected dicamba damage to controls or test plots, that pertains to off-site transport, damage off of the treated area, or contamination of workspaces (indoor or outdoor) following the treatment for a test.
 - b) Dicamba's toxicity to plants (*e.g.*, antagonism, development of resistance), either target or nontarget, through direct application, volatilization, off-site spray drift, potential for long-range transport, runoff, or leaching to groundwater that were commenced by BASF, Bayer (and previously Monsanto), Corteva, or Syngenta, or by others for BASF, Bayer (and previously Monsanto), Corteva, or Syngenta

^[1] This includes all studies and associated data conducted by BASF, Bayer (and previously Monsanto), Corteva, or Syngenta as well by others for BASF, Bayer (and previously Monsanto), Corteva, or Syngenta, including but not limited to university and weed scientists, regardless of the stage of the study (*e.g.*, study began, but not completed)].

where no written reports or summaries were submitted to BASF, Bayer (and previously Monsanto), Corteva, or Syngenta. Include both indoor (greenhouse studies) and outdoor (field or plot studies), as well as reports from efficacy studies or incidents.

If BASF, Bayer (and previously Monsanto), Corteva, Syngenta, any subsidiary of these companies, or any consultant, attorney, or agent who acquired such information while acting as a consultant, attorney, or agent for BASF, Bayer (and previously Monsanto), Corteva, or Syngenta, has any information relating to dicamba that falls into the categories identified above, such information must be submitted pursuant to FIFRA section 6(a)(2) as well as the terms and conditions of registration. Please note that EPA is not asking attorneys to provide any opinions or conclusions rendered as the professional legal judgment of an attorney, as defined in the Model Code, as part of this letter. However, any factual information in the possession of attorneys that attorneys acquired while working for BASF, Bayer (and previously Monsanto), Corteva, or Syngenta that falls into the categories identified in this letter, including any applicable expert opinions of non-attorneys, must be submitted pursuant to this letter. Any information that has previously been submitted to EPA's Office of Pesticide Programs is excluded and need not be provided to the Agency again in response to this letter.

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Friday, March 27, 2020 10:34 AM
To: Kenny, Daniel <Kenny.Dan@epa.gov>
Subject: RE: On phone with Rick

Can you copy and paste the language and I will get right back to you? :)

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Kenny, Daniel <Kenny.Dan@epa.gov>
Sent: Friday, March 27, 2020 9:57 AM
To: Knorr, Michele <knorr.michele@epa.gov>
Subject: RE: On phone with Rick

Quick question on 6a2 letter. We did decide to leave the reference to all four companies and all four products in the body of the letter, even though individual letters are going out to each company, right? I just wanted to make sure I remembered that correctly as I was preparing the finals for signature.

Sorry to keep bugging you. I have to say, you're a pretty good multi-tasker!

Dan

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Friday, March 27, 2020 9:55 AM
To: Kenny, Daniel <Kenny.Dan@epa.gov>
Subject: On phone with Rick

Is this about docketing? You don't have to docket.

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

Message

From: Garrison, Scott [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F3BA15187A464688A839A843B7B59CA0-SGARRISO]
Sent: 3/3/2020 9:27:11 PM
To: Knorr, Michele [Knorr.Michele@epa.gov]; Perlis, Robert [Perlis.Robert@epa.gov]
Subject: RE: Dicamba: enhanced reporting requirements

Confidential communication for internal deliberations only. Attorney-client privilege. Do not distribute outside EPA.

Ex. 5 Attorney Client (AC)

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Tuesday, March 03, 2020 4:26 PM
To: Garrison, Scott <Garrison.Scott@epa.gov>; Perlis, Robert <Perlis.Robert@epa.gov>
Subject: RE: Dicamba: enhanced reporting requirements

Ex. 5 Attorney Client (AC)

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Garrison, Scott <Garrison.Scott@epa.gov>
Sent: Tuesday, March 03, 2020 4:19 PM
To: Knorr, Michele <knorr.michele@epa.gov>; Perlis, Robert <Perlis.Robert@epa.gov>
Subject: RE: Dicamba: enhanced reporting requirements

Confidential communication for internal deliberations only. Attorney-client privilege. Do not distribute outside EPA.

Until we've seen it, we can only speculate whether it meets the reporting criteria, or whether we already have it.

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047

garrison.scott@epa.gov

From: Knorr, Michele <knorr.michele@epa.gov>
Sent: Tuesday, March 03, 2020 4:17 PM
To: Garrison, Scott <Garrison.Scott@epa.gov>; Perlis, Robert <Perlis.Robert@epa.gov>
Subject: RE: Dicamba: enhanced reporting requirements

Good point – we could use that in a letter stating that the jury trial information falls into this category????

Michele L. Knorr, Attorney
Pesticides and Toxic Substances Law Office
Office of General Counsel
202-564-5631

From: Garrison, Scott <Garrison.Scott@epa.gov>
Sent: Tuesday, March 03, 2020 4:13 PM
To: Knorr, Michele <knorr.michele@epa.gov>; Perlis, Robert <Perlis.Robert@epa.gov>
Subject: Dicamba: enhanced reporting requirements

Confidential communication for internal deliberations only. Attorney-client privilege. Do not distribute outside EPA.

Per the 2018 amended registration:

Enhanced Reporting

If Bayer CropScience acquires any of the information identified below, that information must be reported to EPA's Office of Pesticide Programs under section 6(a)(2), or under 40 CFR 159.195 unless you have previously submitted that information to EPA's Office of Pesticide Programs.

12. Information, other than personally identifiable information, received by telephone or in writing regarding potential damage to non-target vegetation from use of dicamba during the 2019 and 2020 growing seasons regardless of any determination that the incident resulted from misuse (intentional or accidental). Information should be forwarded to EPA regardless of which dicamba product may have been used and/or whether or not the alleged damage resulted from a product being used according to label directions. Data should be organized by product and state and should include available information regarding acreage involved, plant species involved, severity of damage, and similar information received. This information must be submitted with cumulative totals and be submitted monthly, beginning March 1, 2019.

13. Information, other than personally identifiable information, received by telephone or in writing regarding reports of dicamba-resistant weeds, and cases of weed control failure and/or suspected resistance. All information should be forwarded to EPA regardless of which dicamba product may have been used and/or whether or not the alleged resistance occurred after an application made according to label directions.

14. A summary of all studies being conducted or sponsored by Bayer CropScience, pertaining to offtarget movement of the labelled use of Xtendimax with VaporGrip Technology (e.g., volatility, physical drift, runoff) must be provided to the EPA.

15. Any information or analysis finding that foods/commodities contain dicamba residues that are

not covered by a tolerance or exceed established tolerance levels.

Given the high number of alleged dicamba-related adverse incidents reported to EPA in 2017 and 2018 by state lead agencies (SLAs) as well as registrants under FIFRA section 6(a)(2), it is an Agency priority to work with registrants to better understand potential risks and impacts from the use of dicamba on dicamba-tolerant soybean and dicamba-tolerant cotton. The following information, which shall be treated by EPA as confidential business information, is being required to be submitted to the Agency to assist the Agency in making future regulatory decisions regarding these uses.

16. Seed sales information for dicamba tolerant soybean seed and dicamba tolerant cotton seed. This information should include all sales of such seed for planting or planted in the 2017 through 2020 growing seasons and should be categorized by state.

17. Number and type of containers, including volume of material produced by registrant Xtendimax with VaporGrip Technology that were relabeled with the amended labeling approved by the Agency on October 31, 2018. This information should be categorized by the state to which registrant shipped such material.

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

Message

From: Garrison, Scott [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F3BA15187A464688A839A843B7B59CA0-SGARRISO]
Sent: 10/22/2020 6:18:01 PM
To: Kenny, Daniel [Kenny.Dan@epa.gov]; Hathaway, Margaret [Hathaway.Margaret@epa.gov]; Echeverria, Marietta [Echeverria.Marietta@epa.gov]; Dan Rosenblatt [Rosenblatt.Dan@epa.gov]
CC: Knorr, Michele [Knorr.Michele@epa.gov]
BCC: Koch, Erin [Koch.Erin@epa.gov]
Subject: FW: Term of Registration
Attachments: DRAFT EPA Tavium Proposed Terms Edits (10-22-2020).DOCX

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I think this is good enough, given that they aren't the technical registrant and they don't make a pH buffer.

But it points out that we need more from Bayer – we need a commitment to make sure enough is available taking into consideration the quantities of XtendiMax that they sell to Syngenta and others.

Do we have a new draft from Bayer?

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Dixon Monty USGR <monty.dixon@syngenta.com>
Sent: Thursday, October 22, 2020 2:07 PM
To: Kenny, Daniel <Kenny.Dan@epa.gov>
Cc: Hathaway, Margaret <Hathaway.Margaret@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Subject: RE: Term of Registration

Good Afternoon Dan,

Please find enclosed a working draft of the Tavium proposed terms around the VRA that Syngenta would be supportive of.

With Best Regards,

Monty

From: Kenny, Daniel <Kenny.Dan@epa.gov>
Sent: Wednesday, October 21, 2020 3:18 PM
To: Dixon Monty USGR <monty.dixon@syngenta.com>

Cc: Hathaway, Margaret <Hathaway.Margaret@epa.gov>

Subject: Term of Registration

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Monty, per our conversation, below is what we are considering...

So long as the Tavium registration continues to require use of a volatility-reduction agent (VRA) with every application, Syngenta will:

1. Take appropriate action(s) to ensure that a sufficient supply of [name of VRA] or any other qualified VRA is in the channels of trade for all Tavium applications each year. To ensure the supply of qualified VRA is sufficient throughout each season, Syngenta will: (1) project and monitor distribution of Tavium; (2) monitor available [name of VRA]/VRA in relevant channels of trade; (3) make available additional supplies if needed to ensure sufficient quantities of [name of VRA]/VRA are available to allow lawful application of the full quantity of Tavium that is available in the channels of trade; and (4) maintain capacity to produce additional [name of VRA]/VRAs (or to cause more [name of VRA]/VRAs to be produced) whenever any further need is anticipated.
2. Make arrangements through appropriate distribution networks to ensure that [name of VRA] or other appropriate VRAs are timely available to applicators in all locations where Tavium will be applied, before any applicator would apply Tavium. Access to [name of VRA] will either be through the same retail outlets as Tavium, or if necessary in particular locations, available from other readily accessible sources. Registrant will timely make available to every applicator information on where [name of VRA] can be ordered or purchased.
3. Ensure that all training materials clearly require the mandatory use of [name of VRA] or another VRA with every Tavium application. Work with State authorities to ensure that appropriate training occurs before any application of Tavium is made.
4. Syngenta will keep records appropriate to document its compliance with its volatility-reduction agent quantity commitments. Syngenta will make records available to EPA upon request.

Please take a look and let us know your feedback on this.

Thanks,
Dan

Daniel Kenny, Chief
Herbicide Branch
Registration Division
Office of Pesticide Programs
U.S. Environmental Protection Agency

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ED_005570D_00039949-00002

Message

From: Garrison, Scott [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F3BA15187A464688A839A843B7B59CA0-SGARRISO]
Sent: 10/21/2020 4:06:09 PM
To: Meadows, Sarah [Meadows.Sarah@epa.gov]; Knorr, Michele [Knorr.Michele@epa.gov]; Dobreniecki, Sarah [Dobreniecki.Sarah@epa.gov]; Metzger, Michael [Metzger.Michael@epa.gov]
CC: Kenny, Daniel [Kenny.Dan@epa.gov]; Hathaway, Margaret [Hathaway.Margaret@epa.gov]; Schmid, Emily [Schmid.Emily@epa.gov]; Crawford, Lydia [Crawford.Lydia@epa.gov]
BCC: Koch, Erin [Koch.Erin@epa.gov]
Subject: RE: HED's New Dicamba Memo
Attachments: HED dicamba memo 102120.sbg.docx

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My comments on the HED memo are in the Teams file; a copy is also attached.

Scott Garrison
Pesticides and Toxic Substances Law Office (2333A)
Office of General Counsel
U.S. Environmental Protection Agency
202-564-4047
garrison.scott@epa.gov

From: Meadows, Sarah <Meadows.Sarah@epa.gov>
Sent: Wednesday, October 21, 2020 9:47 AM
To: Knorr, Michele <knorr.michele@epa.gov>; Garrison, Scott <Garrison.Scott@epa.gov>
Cc: Kenny, Daniel <Kenny.Dan@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>; Schmid, Emily <Schmid.Emily@epa.gov>; Crawford, Lydia <Crawford.Lydia@epa.gov>
Subject: HED's New Dicamba Memo

Hi, Michele and Scott. HED just sent us their new memo. Meg will be putting a version on MS teams soon for concurrent review.

One thing HED noted was the need for a bean for the memo. Should we put the muta. studies as a submission under Bayer's new Xtendimax product in OPPIN? Please just let us know what would be best for the record.

Thanks,

Sarah


Sarah True Meadows, PhD
US Environmental Protection Agency
Office of Pesticide Programs
Registration Division – Herbicide Branch
(703) 347-0505
meadows.sarah@epa.gov


Message

From: Dinkins, Darlene [Dinkins.Darlene@epa.gov]
Sent: 9/21/2020 4:08:33 PM
To: Messina, Edward [Messina.Edward@epa.gov]; Goodis, Michael [Goodis.Michael@epa.gov]
Subject: Dicamba letters
Attachments: 20-000-6923.pdf; 20-000-6843.pdf

<!--[if lte mso 15 || CheckWebRef]-->


Dinkins, Darlene has shared OneDrive for Business files with you. To view them, click the links below.


 20-000-5185.pdf


 20-000-5503.pdf


 20-000-6489.pdf

 20-000-6547.pdf


 20-000-6722.pdf


 20-000-6843.pdf

 20-000-6946.pdf

 20-000-6990.pdf

 20-000-7031.pdf

 20-000-7086.pdf

 20-000-7104.pdf

 20-000-7120.pdf

<!--[endif]-->

Ed and Mike,

Some time ago, during an OPP General, we raised the question about how to/if we should respond to the dicamba letters referencing the court decision. Alex said since Derrick and Carrie had already reached out to a number of these stakeholders, that we could close those out. CSB has already closed out several and are still in the process of closing out those letters. But we still have a number of stakeholder letters that do not reference the court decision. These stakeholders are weighing in on the registration decision. We are now holding these letters, but wondering about how to handle them. Any thoughts? Do you want to continue to hold them, or raise this during the General?

Darlene Dinkins

Office of Pesticide Programs
U.S. Environmental Protection Agency
(703) 305-5214

From: Cyran, Carissa <Cyran.Carissa@epa.gov>
Sent: Friday, September 18, 2020 8:02 PM
To: O'Neill, Sandra <O'Neill.Sandra@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>
Cc: Dinkins, Darlene <Dinkins.Darlene@epa.gov>
Subject: Re: Soybean Letter this week?

Attached are all the letters I currently have. I've noted in the file name if I've requested closure due to the incoming referencing the court decision and/or 3 products noted in the decision.

From: Cyran, Carissa <Cyran.Carissa@epa.gov>
Sent: Friday, September 18, 2020 6:43 PM
To: O'Neill, Sandra <O'Neill.Sandra@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>; Siedschlag, Gregory <Siedschlag.Gregory@epa.gov>
Cc: Kenny, Daniel <Kenny.Dan@epa.gov>; Crawford, Lydia <Crawford.Lydia@epa.gov>; Meadows, Sarah <Meadows.Sarah@epa.gov>; Schmid, Emily <Schmid.Emily@epa.gov>; Echeverria, Marietta <Echeverria.Marietta@epa.gov>; Wormell, Lance <Wormell.Lance@epa.gov>; Dinkins, Darlene <Dinkins.Darlene@epa.gov>
Subject: Re: Soybean Letter this week?

Attached is one letter I found from the Kansas Soybean Association as well as a handful others. Are we responding to dicamba letters? I have requested closure of an additional 11 controls that have referenced the 9th circuit court decision and/or Xtendimax, Engenia, and FeXapan.

I believe Darlene was working with Derrick Bolen in OCSPF IO regarding dicamba letters.

From: O'Neill, Sandra <O'Neill.Sandra@epa.gov>
Sent: Friday, September 18, 2020 6:30 PM
To: Hathaway, Margaret <Hathaway.Margaret@epa.gov>; Siedschlag, Gregory <Siedschlag.Gregory@epa.gov>; Cyran, Carissa <Cyran.Carissa@epa.gov>
Cc: Kenny, Daniel <Kenny.Dan@epa.gov>; Crawford, Lydia <Crawford.Lydia@epa.gov>; Meadows, Sarah <Meadows.Sarah@epa.gov>; Schmid, Emily <Schmid.Emily@epa.gov>; Echeverria, Marietta <Echeverria.Marietta@epa.gov>; Wormell, Lance <Wormell.Lance@epa.gov>
Subject: Re: Soybean Letter this week?

Hi Meg, I'm adding Greg and Carissa in CSB for questions on Dicamba correspondence.

Greg and Carissa,

RD is inquiring whether any soybean organizations have written in this week regarding Dicamba, and also a question about contacts in the OCSPP IO for stakeholder feedback (email below). Sounds like it's possible that the letter may but have arrived, and RD is looking to verify if that is the case.

A good weekend to all,

Sandra O'Neill

Government Liaison

Government and International Services Branch II Field and External Affairs Division II OPP/OCSPP II U.S. EPA II 919-323-7926

On Sep 18, 2020, at 4:39 PM, Hathaway, Margaret <Hathaway.Margaret@epa.gov> wrote:

Hi Sandra:

Has FEAD seen any letters this week from one of the soybean organizations? There's confusion in RD because Alex Dunn and the registrants seem to have a letter advocating for the importance of two over-the-top soybean applications of dicamba, and we are unsure what they are referencing. It may not have made it to OPP at all.

Also, if similar issues come up in the future, do you have a go-to contact in Alex's office re. stakeholder feedback?

1. Meg

Message

From: Keigwin, Richard [Keigwin.Richard@epa.gov]
Sent: 8/25/2020 6:14:59 PM
To: Messina, Edward [Messina.Edward@epa.gov]; Goodis, Michael [Goodis.Michael@epa.gov]
Subject: FW: Dicamba

From: Ford Baldwin <ford@weedconsultants.com>
Sent: Tuesday, August 25, 2020 10:47 AM
To: Keigwin, Richard <Keigwin.Richard@epa.gov>; Chism, William <Chism.Bill@epa.gov>; Kenny, Daniel <Kenny.Dan@epa.gov>
Subject: Dicamba

I have attached three photos of soybean fields I have inspected in 2020- two from Arkansas and one from South Dakota. I have also attached a photo of a sycamore tree and one of a ginkgo tree.

I have travelled extensively throughout Arkansas, Missouri, West TN, Iowa and South Dakota this summer and the soybean photos are very representative of what happened to any farmer who had the audacity to try to grow any soybeans other than Xtend. Why are these farmers not receiving equal consideration- compared to those who want the Xtend technology- in the registration process? For a farmer to not have the right to grow anything he chooses without the fear of chemical trespass- is simply wrong. Some say things are getting better as complaint numbers are down. In Arkansas we have over 200 alleged dicamba complaints, down from nearly 1000 in 2017. Does that make 200 good? Two hundred complaints on a single herbicide would have been unheard of prior to Xtend crops. Also most all of our dicamba applications occurred after the May 25 cutoff so farmers are simply giving the middle finger to regulations. I observed the same in SD. In SD the state will not send an inspector out unless the complainant names the perpetrator. They won't go look but claim they have less complaints than last year. Go figure. The MO Department of AG won't respond to a dicamba complaint so sure their numbers are down. In addition many growers have surrendered to the company marketing model, defensive planting, and that has helped soybean complaint numbers. Does this make it right. Many folks just don't complain because nothing ever comes of it.

You will note in the photos I sent there are no drift patterns. The field in the first photo is one of 1400 acres that were perfectly uniform in damage. That is simply caused by atmospheric loading of dicamba volatiles. There was not a direct potential dicamba source within line of sight of any field. I found the same thing in SD. Also up I-29 from the bottom to top of Iowa you can pick out every Xtend and non-Xtend field at Interstate speed limits.

The sycamore tree photo wasn't near a dicamba application. I have observed them all over the Mississippi River Delta and all the way to Kankakee IL. If they are anywhere, including the middle of towns in the in-crop use areas, that is what they look like. That is only one example. Many other species including oaks, cypress, ornamentals and fruit trees are being damaged. The ginkgo tree was on a University Experiment Station. Anyone who is involved in the registration decision should be required to take a driving tour of the MO bootheel and just look at the trees- in towns and throughout the countryside. They look terrible as most have been hit multiple times over several years.

I was a causation expert in the Bader Farms peach trial. As a result I have seen many of the company registration documents and the entire process was a joke. Now they propose to send some more Vapor Grip (vinegar) with the Xtendimax for the applicator to dump in the tank and call it a fix. How much more verified in field use data and information do they have to support this being a fix? Furthermore we know the addition of glyphosate to the tank with dicamba dramatically increases volatility yet they continue to promote it. Now they want to register glufosinate-ammonium with dicamba for use in XtendFlex. That alone tells me they aren't serious about reducing or eliminating volatility. Nothing they have told the Agency about off target movement has been right yet. Science simply does not support any of the current dicamba formulations being registered for in-crop use. Until a completely non-volatile formulation of dicamba is developed, this herbicide simply will not stay on target.

I realize the entire dicamba situation is complex. Like you, I have been embroiled in the middle of it for several years. It is the most divisive herbicide technology ever in my 46 years as a weed scientist. There are three categories of soybean farmers: those who want the technology; those who have been forced to plant it defensively for economic survival; and

those who want to plant other technologies for very sound reasons. There are also homeowners and growers of other crops being negatively affected. It appears that only those that wish to use the Xtend technology have been considered. In reality, they have options to use other technologies. Those being negatively impacted by dicamba are innocent bystanders. I encourage the agency to give equal consideration to all parties involved in the upcoming registration decision.

Sincerely, Ford Baldwin Ph.D





Sent from my iPhone

Message

From: Kenny, Daniel [Kenny.Dan@epa.gov]
Sent: 6/2/2020 12:47:45 PM
To: Goodis, Michael [Goodis.Michael@epa.gov]; Aubee, Catherine [Aubee.Catherine@epa.gov]; Rosenblatt, Daniel [Rosenblatt.Dan@epa.gov]
Subject: RE: VaporGrip Extra

The message that I've been trying to send to the registrants is that, unless they are looking to cancel and replace their existing products, we are obligated to look at what we need to for the products that are already out there, and then we can worry about new products. Hopefully that's still in line with senior management thinking on this.

From: Goodis, Michael <Goodis.Michael@epa.gov>
Sent: Tuesday, June 02, 2020 8:36 AM
To: Aubee, Catherine <Aubee.Catherine@epa.gov>; Rosenblatt, Daniel <Rosenblatt.Dan@epa.gov>
Cc: Kenny, Daniel <Kenny.Dan@epa.gov>
Subject: RE: VaporGrip Extra

Right – I sent the same message to Marietta.

Michael L. Goodis, P.E.
Director, Registration Division (RD)
Office of Pesticide Programs (OPP)

Phone 703-308-8157
Room S7623

From: Aubee, Catherine <Aubee.Catherine@epa.gov>
Sent: Tuesday, June 02, 2020 8:30 AM
To: Goodis, Michael <Goodis.Michael@epa.gov>; Rosenblatt, Daniel <Rosenblatt.Dan@epa.gov>
Cc: Kenny, Daniel <Kenny.Dan@epa.gov>
Subject: Re: VaporGrip Extra

FYI - EFED is expressing concerns about timing and wants to know if there is clear direction from Rick on how this factors into priorities for the decision. I told Jan we'd loop back after today's general.

Best,
Catherine
Associate Director (Acting)
OPP Registration Division
US Environmental Protection Agency

On Jun 2, 2020, at 8:09 AM, Hathaway, Margaret <Hathaway.Margaret@epa.gov> wrote:

Good morning, Mike:
Yes, HB can confirm that VaporGrip data has been submitted to EPA. The team has not yet reviewed the submissions, but RD has just created a bean for EFED.

The VaporGrip submission package concerns EPA Reg. No. 524-617 (M1768 Herbicide / XtendiMax® With VaporGrip® Technology), and potential benefits claimed from adding MON 51817 (the adjuvant) in a tank mix with M1768 Herbicide. The MRIDs associated with this submission are 51134100 - 51134105.

Detailed Bibliography:

- Transmittal Document (MRID 51134100)
- Summary of Studies Conducted with MON 51817 in XtendiMax® With VaporGrip® Technology Tank Mixtures (MRID 51134101)
- Bibliography of MON 51817 Spray Drift and Volatility Data (MRID 51134102)
- Report: Field Volatility of Spray Solutions Containing Dicamba for Post-emergent Uses: Mon 76980 (22 oz/A) with different tank mix partners (MRID 51134103)
- Report: Deposition and Air Concentration Modeling for Dicamba Formulation MON 76980 with Different Tank Mix Partners – 2018 Arizona Field Trial (MRID 51134104)
- Report: Off-Target Disposition of Spray Solutions Containing Dicamba Formulations MON 76980 and MON 119151 (MRID 51134105)

- Meg

From: Goodis, Michael <Goodis.Michael@epa.gov>

Sent: Tuesday, June 02, 2020 6:43 AM

To: Kenny, Daniel <Kenny.Dan@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>

Cc: Rosenblatt, Daniel <Rosenblatt.Dan@epa.gov>; Aubee, Catherine <Aubee.Catherine@epa.gov>

Subject: RE: VaporGrip Extra

We have a general with Rick at 11 today.

Any information I can share?

Michael L. Goodis, P.E.

Director, Registration Division (RD)

Office of Pesticide Programs (OPP)

Phone 703-308-8157

Room S7623

From: Goodis, Michael

Sent: Saturday, May 30, 2020 2:36 PM

To: Kenny, Daniel <Kenny.Dan@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>

Cc: Rosenblatt, Daniel <Rosenblatt.Dan@epa.gov>; Aubee, Catherine <Aubee.Catherine@epa.gov>

Subject: Fwd: VaporGrip Extra

See below. Can we confirm these data were submitted? Let's discuss Monday.

Sent from my iPhone

Begin forwarded message:

From: "Keigwin, Richard" <Keigwin.Richard@epa.gov>

Date: May 30, 2020 at 8:01:18 AM EDT

To: "Goodis, Michael" <Goodis.Michael@epa.gov>, "Echeverria, Marietta" <Echeverria.Marietta@epa.gov>

Cc: "Messina, Edward" <Messina.Edward@epa.gov>

Subject: VaporGrip Extra

Alex met with Bayer yesterday to discuss several topics. One of those topics was their new VaporGrip Extra technology.

I know we only just received the data (Bayer mentioned that they submitted it in early May) so it is likely that the team is only starting to look at those data. With that in mind, it would be helpful to get an early read (even qualitatively) on what the data show in terms of promise for this technology in reducing vapor drift. Bayer will want to engage on this adjuvant soon, so any initial reactions could be helpful in some of the upcoming discussions that are likely to occur.

Rick Keigwin
Director, Office of Pesticide Programs
U.S. Environmental Protection Agency
Phone: 703-305-7090
Website: <http://www.epa.gov/pesticides>
Sent from my iPhone (Please excuse typos!)

Message

From: Rosenblatt, Daniel [Rosenblatt.Dan@epa.gov]
Sent: 3/11/2020 8:16:31 PM
To: Goodis, Michael [Goodis.Michael@epa.gov]
CC: Kenny, Daniel [Kenny.Dan@epa.gov]; Maignan, Tawanda [Maignan.Tawanda@epa.gov]
Subject: FW: please stop by when you can

Mike – here's info on two different states that recently submitted SLNs for dicamba.

State	SLN No (s)	Associated EPA Approved Section 3 (Registrant)	Date SLN Issued by the State	SLN OPP Receipt Date	90-day Due Date	Additional Restrictions from Federal Registration
MINNESOTA	MN200001	524-617 Xtendimax VaporGrip (Monsanto)	2/25/2020	3/2/2020	5/31/2020	Add cut-off date: Do not apply after June 20, 2020, except for registrant demonstrations or trials specifically approved by MDA
	MN200002	7969-345 Engenia Herbicide (BASF Corp)	2/25/2020	3/2/2020	5/31/2020	Add cut-off date: Use of Engenia in dicamba-tolerant soybeans is prohibited after June 20, 2020, except for registrant demonstrations or trials specifically approved by Minnesota Department of Ag
	MN200003	352-913 Dupont Fexapan Herbicide Plus VaporGrip (Corteva Agriscience)	2/25/2020	3/2/2020	5/31/2020	Add cut-off date: Do not apply after June 20, 2020, except for registrant demonstrations or trials specifically approved by MDA
	MN200004	100-1623 Tavium Plus VaporGrip Tech (Syngenta)	2/25/2020	3/2/2020	5/31/2020	Add cut-off date: Do not apply after June 20, 2020, except for registrant demonstrations or trials specifically approved by MDA
IOWA	IA200001	100-1623 Tavium Plus VaporGrip Tech (Syngenta)	3/4/2020	3/6/2020	6/4/2020	Add auxin herbicide training

From: Rosenblatt, Daniel <Rosenblatt.Dan@epa.gov>
Sent: Wednesday, March 11, 2020 2:50 PM
To: Maignan, Tawanda <Maignan.Tawanda@epa.gov>
Subject: please stop by when you can

Tawanda – wanted to catch up. Also – can you work up and send the updated 24-c list with the two 'new' states. Thanks

Daniel J. Rosenblatt
Deputy Director, Registration Division
Office of Pesticide Programs
Rosenblatt.dan@epa.gov
703-308-9366

Message

From: Dinkins, Darlene [Dinkins.Darlene@epa.gov]
Sent: 9/24/2020 7:27:26 PM
To: Messina, Edward [Messina.Edward@epa.gov]; Goodis, Michael [Goodis.Michael@epa.gov]
Subject: RE: Dicamba letters

Thanks. Will do.

Darlene Dinkins

Office of Pesticide Programs
U.S. Environmental Protection Agency
(703) 305-5214

From: Messina, Edward <Messina.Edward@epa.gov>
Sent: Monday, September 21, 2020 12:25 PM
To: Dinkins, Darlene <Dinkins.Darlene@epa.gov>; Goodis, Michael <Goodis.Michael@epa.gov>
Subject: RE: Dicamba letters

I think we can hold until we release and then send them a thankyou for their letter with the referenced web-site and docket.

Ed

Ed Messina, Esq.
Acting Office Director
Office of Pesticide Programs
Office of Chemical Safety & Pollution Prevention
U.S. Environmental Protection Agency
Washington, D.C.
p: (703) 347-0209

From: Dinkins, Darlene <Dinkins.Darlene@epa.gov>
Sent: Monday, September 21, 2020 12:09 PM
To: Messina, Edward <Messina.Edward@epa.gov>; Goodis, Michael <Goodis.Michael@epa.gov>
Subject: Dicamba letters

Ed and Mike,

Some time ago, during an OPP General, we raised the question about how to/if we should respond to the dicamba letters referencing the court decision. Alex said since Derrick and Carrie had already reached out to a number of these stakeholders, that we could close those out. CSB has already closed out several and are still in the process of closing out those letters. But we still have a number of stakeholder letters that do not reference the court decision. These stakeholders are weighing in on the registration decision. We are now holding these letters, but wondering

about how to handle them. Any thoughts? Do you want to continue to hold them, or raise this during the General?

Darlene Dinkins

Office of Pesticide Programs
U.S. Environmental Protection Agency
(703) 305-5214

From: Cyran, Carissa <Cyran.Carissa@epa.gov>
Sent: Friday, September 18, 2020 8:02 PM
To: O'Neill, Sandra <O'Neill.Sandra@epa.gov>; Hathaway, Margaret <Hathaway.Margaret@epa.gov>
Cc: Dinkins, Darlene <Dinkins.Darlene@epa.gov>
Subject: Re: Soybean Letter this week?

Attached are all the letters I currently have. I've noted in the file name if I've requested closure due to the incoming referencing the court decision and/or 3 products noted in the decision.

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Cc: Kenny, Daniel <Kenny.Dan@epa.gov>; Crawford, Lydia <Crawford.Lydia@epa.gov>; Meadows, Sarah <Meadows.Sarah@epa.gov>; Schmid, Emily <Schmid.Emily@epa.gov>; Echeverria, Marietta <Echeverria.Marietta@epa.gov>; Wormell, Lance <Wormell.Lance@epa.gov>; Dinkins, Darlene <Dinkins.Darlene@epa.gov>
Subject: Re: Soybean Letter this week?

Attached is one letter I found from the Kansas Soybean Association as well as a handful others. Are we responding to dicamba letters? I have requested closure of an additional 11 controls that have referenced the 9th circuit court decision and/or Xtendimax, Engenia, and FeXapan.

I believe Darlene was working with Derrick Bolen in OCSPF IO regarding dicamba letters.

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Sent: Friday, September 18, 2020 6:30 PM
To: Hathaway, Margaret <Hathaway.Margaret@epa.gov>; Siedschlag, Gregory <Siedschlag.Gregory@epa.gov>; Cyran, Carissa <Cyran.Carissa@epa.gov>
Cc: Kenny, Daniel <Kenny.Dan@epa.gov>; Crawford, Lydia <Crawford.Lydia@epa.gov>; Meadows, Sarah <Meadows.Sarah@epa.gov>; Schmid, Emily <Schmid.Emily@epa.gov>; Echeverria, Marietta <Echeverria.Marietta@epa.gov>; Wormell, Lance <Wormell.Lance@epa.gov>
Subject: Re: Soybean Letter this week?

Hi Meg, I'm adding Greg and Carissa in CSB for questions on Dicamba correspondence.

Greg and Carissa,

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A good weekend to all,

Sandra O'Neill

On Sep 18, 2020, at 4:39 PM, Hathaway, Margaret <Hathaway.Margaret@epa.gov> wrote:

Hi Sandra:

Has FEAD seen any letters this week from one of the soybean organizations? There's confusion in RD because Alex Dunn and the registrants seem to have a letter advocating for the importance of two over-the-top soybean applications of dicamba, and we are unsure what they are referencing. It may not have made it to OPP at all.

Also, if similar issues come up in the future, do you have a go-to contact in Alex's office re. stakeholder feedback?

1. Meg

From: Kaiser, Sven-Erik [Kaiser.Sven-Erik@epa.gov]
Sent: 10/1/2020 11:45:32 PM
To: Keigwin, Richard [Keigwin.Richard@epa.gov]; Grable, Melissa [Grable.Melissa@epa.gov]; Hanley, Mary [Hanley.Mary@epa.gov]; Dennis, Allison [Dennis.Allison@epa.gov]; Messina, Edward [Messina.Edward@epa.gov]; Goodis, Michael [Goodis.Michael@epa.gov]; Dinkins, Darlene [Dinkins.Darlene@epa.gov]; Grisby, Erin [grisby.erin@epa.gov]
Subject: Rep. Guest Press Release on Dicamba Letter

FYI- the letter is in CMS and co trolled to OCSPP.

Bipartisan Group of Lawmakers Calls for New Registrations for Dicamba Products

October 1, 2020
Press Release

Washington, DC – Congressman Michael Guest (R-MS) and Congressman Sanford Bishop (D-GA) led a bipartisan letter encouraging the Administrator of the Environmental Protection Agency (EPA), Andrew Wheeler, to issue new registrations for four dicamba products. Because the Ninth Circuit Court's ruling in June of this year vacated prior registrations for Engenia®, Xtendimax®, and FeXapan®, many farmers face an uncertain future about the use of products they rely on to help manage soybean, cotton, and other crops. New registrations of the products would help clarify the use of these critical products as farmers begin making decisions on their management strategies for next year.

"I am pleased to join my colleagues in this bipartisan effort. We are working in support of American farmers and trying to bring confidence and clarity to our producers before the upcoming crop year," **Congressman Michael Guest said.** Last year's court decision put in jeopardy millions of acres of crops across our country, and especially Mississippi. As our farmers continue to battle a pandemic, natural disasters, and fluctuating markets, it is critical they have the tools necessary to a successful growing season."

"The 9th Circuit court ruling to vacate the registration for dicamba products Engenia®, Xtendimax®, and FeXapan® was disruptive to our farming community nationwide as well as in Georgia. Our farm producers are now faced with identifying alternative weed control methods. As the next growing season approaches, the release of a new registration with the most up-to-date, scientifically based data will aid in meeting the demands for our food supply chain," **said Congressman Sanford Bishop**

A bipartisan group of 30 Members of Congress joined the letter. A copy of the letter is available [here](#).

You can find the full text of the letter below:

Dear Administrator Wheeler:

We write today to encourage the Environmental Protection Agency (EPA) to issue new registrations for dicamba products Engenia®, Xtendimax®, FeXapan®, and Tavium®. We also support issuance of these registrations quickly and in simple, clear, and understandable language so that producers can make herbicide and seed purchasing decisions ahead of the 2021 crop year.

We understand that the Agency's decision on new dicamba registrations has been challenging due to the June decision by the 9th Circuit Court to vacate all three registrations. However, we also understand the EPA now has newer data and information on the products, as well as information from states on the effectiveness of stewardship and training programs that have been recently implemented, and we are confident that the EPA will be able to address the issues raised by the court.

These three products are used across millions of acres of dicamba-tolerant soybean, cotton, and other crops to manage broadleaf weeds throughout the crop growing season. It is especially important for these crops that weed control is managed throughout the growing season, not simply until crop-emergence. The ability to control weed growth, regardless of when weeds occur during the growing process, ensures a full, successful crop. We hope that any new registration will allow for the over the top application of the dicamba products throughout the growing season.

Without new registrations, the industry may not be able to handle the demand shifts that would result from the unavailability of these products. During these trying times for our producers, in which they have battled a pandemic, natural disasters, and fluctuating markets, it would be unfair to subject them to such changes that may impact the cost and effectiveness of their growing season. Without these products, we are also removing an additional crop protection tool that is critical to producers, as they have invested significantly into the dicamba tolerant trait crop.

We appreciate the support your agency has provided to our farmers and ranchers. We encourage EPA to proceed swiftly with new registrations for these dicamba products so that our producers can have a clear and understandable direction going into the 2021 crop year.

Message

From: Dinkins, Darlene [Dinkins.Darlene@epa.gov]
Sent: 10/1/2020 5:41:50 PM
To: Kaiser, Sven-Erik [Kaiser.Sven-Erik@epa.gov]; Keigwin, Richard [Keigwin.Richard@epa.gov]; Grable, Melissa [Grable.Melissa@epa.gov]; Hanley, Mary [Hanley.Mary@epa.gov]; Tyler, Tom [Tyler.Tom@epa.gov]; Messina, Edward [Messina.Edward@epa.gov]; Goodis, Michael [Goodis.Michael@epa.gov]
Subject: RE: Rep. Guest and 30+ members Dicamba Registration Letter

Thanks Sven. We'll look out for it in CMS as well.

Darlene Dinkins

Office of Pesticide Programs
U.S. Environmental Protection Agency
(703) 305-5214

From: Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>
Sent: Thursday, October 01, 2020 11:37 AM
To: Keigwin, Richard <Keigwin.Richard@epa.gov>; Grable, Melissa <Grable.Melissa@epa.gov>; Hanley, Mary <Hanley.Mary@epa.gov>; Tyler, Tom <Tyler.Tom@epa.gov>; Messina, Edward <Messina.Edward@epa.gov>; Goodis, Michael <Goodis.Michael@epa.gov>; Dinkins, Darlene <Dinkins.Darlene@epa.gov>
Subject: Rep. Guest and 30+ members Dicamba Registration Letter

Heads up on a new Dicamba letter. We'll enter it into CMS and control to OCSPP. Similar to the 9/17 House Ag letter. Thanks,
Sven

Sven-Erik Kaiser
Office of Congressional and Intergovernmental Relations
U.S. Environmental Protection Agency
202-566-2753
kaiser.sven-erik@epa.gov

From: White, Bubba <Joseph.WhiteIII@mail.house.gov>
Sent: Wednesday, September 30, 2020 3:49 PM
To: Washam, Todd <Washam.Todd@epa.gov>
Cc: Kolb, John (JohnMark) <kolb.john@epa.gov>; Solomon, Maya <Maya.Solomon@mail.house.gov>
Subject: Dicamba Registration Letter

Todd,

Please see the attached bipartisan letter to Administrator Wheeler from 32 members of Congress encouraging the issuance off new registrations for four dicamba products: Engenia®, Xtendimax®, FeXapan®, and Tavium®. We also support issuance of these registrations quickly and in simple, clear, and understandable language so that producers can make herbicide and seed purchasing decisions ahead of the 2021 crop year.

Please let us know if you have any questions. A hard copy has been put in the mail.

Best,
Bubba



Bubba White

Legislative Assistant

Rep. Michael Guest (MS-03)

202.226.8289 – Office

202.981-3106 – Cell

230 Cannon HOB

Washington, DC 20515



Message

From: Messina, Edward [Messina.Edward@epa.gov]
Sent: 9/16/2020 10:10:45 PM
To: Perrin, Rebecca [Perrin.Rebecca@epa.gov]
CC: Striegel, Megan [Striegel.Megan@epa.gov]; Meadows, Carrie Vicenta [Meadows.CarrieVicenta@epa.gov]; Siedschlag, Gregory [Siedschlag.Gregory@epa.gov]; Goodis, Michael [Goodis.Michael@epa.gov]
Subject: RE: Couple of quick questions

OK. Greg from our Comms shop can help with any needed responses.

Ed

Ed Messina, Esq.
Acting Office Director
Office of Pesticide Programs
Office of Chemical Safety & Pollution Prevention
U.S. Environmental Protection Agency
Washington, D.C.
p: (703) 347-0209

From: Perrin, Rebecca <Perrin.Rebecca@epa.gov>
Sent: Wednesday, September 16, 2020 4:12 PM
To: Messina, Edward <Messina.Edward@epa.gov>
Cc: Striegel, Megan <Striegel.Megan@epa.gov>; Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>
Subject: RE: Couple of quick questions

Ed,

Quick head's up but we got a variety of questions related to pesticides on this trip, which I know is not a surprise. I will circle back with you on the main themes. As usual your folks got kudos and their work is much appreciated by the producers we engaged.

However, in today's meeting with NDSU we got specific one that I will forward to see if you or someone from your program would prefer to follow-up with the researcher directly. I will work to get these to you ASAP.

Thanks!

Rebecca Perrin
Region 8 Agriculture Advisor | Office of the Regional Administrator | USEPA
1595 Wynkoop Street (8ORA-IO) | Denver CO 80202 | DL: 303-312-6311 | FAX: 303-312-6882

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From: Messina, Edward <Messina.Edward@epa.gov>
Sent: Friday, September 11, 2020 4:52 PM

To: Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>
Cc: Perrin, Rebecca <Perrin.Rebecca@epa.gov>; Striegel, Megan <Striegel.Megan@epa.gov>
Subject: RE: Couple of quick questions

We are shooting for that but depends on others if we make that. I don't want to promise more outside of OPP.

Ed

Ed Messina, Esq.
Acting Office Director
Office of Pesticide Programs
Office of Chemical Safety & Pollution Prevention
U.S. Environmental Protection Agency
Washington, D.C.
p: (703) 347-0209

From: Meadows, Carrie Vicenta <Meadows.CarrieVicenta@epa.gov>
Sent: Friday, September 11, 2020 6:25 PM
To: Messina, Edward <Messina.Edward@epa.gov>
Cc: Perrin, Rebecca <Perrin.Rebecca@epa.gov>; Striegel, Megan <Striegel.Megan@epa.gov>
Subject: Re: Couple of quick questions

Ed- Is this correct or a typo for bstimulants? I thought in the opp meeting last week the timeline was September.

Sent from my iPhone

On Sep 11, 2020, at 5:53 PM, Messina, Edward <Messina.Edward@epa.gov> wrote:

- Dicamba – We have been informed that they will be asked question on live radio about this topic next week. I wanted to check in and see if we can get the most recent desk statement or if the best info to speak from is still the press releases.
 - **RESPONSE:** EPA is currently reviewing applications for registration from Bayer CropScience and BASF for new registrations of dicamba-based herbicides for over-the-top application for post-emergent use on genetically modified, dicamba-tolerant ("DT") soybeans and cotton. Similarly, EPA is also reviewing an application from Syngenta to remove or revise the expiration of its registration for an over-the-top application onto DT soybeans and cotton to allow its use in the 2021 growing season. EPA expects to announce its decisions on whether to register/renew the products by the end of October.

EPA will have to determine, based on new studies, data and proposed labels, whether the registration applications are sufficient to overcome the deficits identified by the Ninth Circuit in vacating the previous Bayer and BASF registrations.

Background

On June 3, 2020, the Ninth Circuit Court of Appeals issued an order vacating EPA's

pesticide registrations containing the active ingredient dicamba: Xtendimax with Vaporgrip Technology (Bayer product with former EPA Reg. No. 524-617); Engenia – (BASF product with former EPA Reg. No. 7969-345); and FeXapan – (Dupont/Corteva product with former EPA Reg. No. 352-913). These three registrations had been conditional and would have expired in late 2020.

On June 8, 2020, EPA issued a cancellation order providing farmers and distributors with needed clarity following the Ninth Circuit's decision. The order outlined limited and specific circumstances under which existing stocks of the three affected dicamba products could be distributed and used, through July 31, 2020.

Bayer and BASF have submitted applications for new registrations, but to date, Corteva has not. The registration for Syngenta's product Tavium (EPA Reg. No. 100-1623) was not vacated by the court but still expires in late 2020.

The Ninth Circuit found that EPA had made multiple errors in granting the conditional registrations: substantially understating the risks it acknowledged and entirely failing to acknowledge other risks.

- The last info I saw about Plant Regulators and Biostimulants proposed guidance was that the comment period closed in July 2019. Are we still reviewing feedback? Or did we do a soft release and I missed something? Do we plan to announce anything related to this while Carrie and Greg (R8 RA) are in ND next week?
 - **RESPONSE:** EPA will be releasing a revised draft biostimulants guidance for public comment based on input received during the comment period earlier this year. Internal: Probably December.
- Are there 36 EPA registered products for hemp? I know our website is in the process of being updated but I keep seeing this # in news articles and I wanted to know if it was true.
 - **RESPONSE:** 46 <https://www.epa.gov/pesticide-registration/pesticide-products-registered-use-hemp#:~:text=In%20December%202019%2C%20EPA%20approved,one%20is%20a%20conventional%20pesticide>
- Regarding the WPS proposed AEZ revision, the last briefing paper I saw on this was that we were targeting Sept 2020 for finalization of the AEZ changes. Is that still the case? If not, are we thinking fall 2020? Winter 2020? Something entirely different?
 - **RESPONSE:** Please note timing has not been made public. The AEZ final rule was submitted to OMB for Executive Order 12866 Regulatory Review on July 31, 2020 (<https://www.reginfo.gov/public/do/eoDetails?rrid=130951>), and will be undergoing review up to 90 days. EPA anticipates publication in the Federal Register this fall. The final rule will go into effect 60 days after publication.
- Do you have recent talking points or desk statement related to the COVID-19 and C&T memo below? Carrie and Greg are meeting with ND Ag Commissioner Doug Goehring. I want to make sure we are communicating how you want on this topic. https://www.epa.gov/sites/production/files/2020-07/documents/covid-19-ocspp-pesticide-ct-statement_2020-07-27.pdf.
 - **RESPONSE:** In July 2020, EPA released temporary guidance regarding the certification of pesticide applicators of restricted use pesticides that offers flexibility during the COVID-19 public health emergency. The Agency is aware that state, tribal and federal certifying

authorities may need to make temporary changes to their existing pesticide applicator certification programs during this time. Given the evolving circumstances and the urgency involved, EPA determined that certain temporary changes to their programs should be preapproved and may be implemented provided that they are not likely to significantly diminish applicator competence or undermine future certification activities and all conditions are met. There are conditions in order to make the changes, and a state would need to notify EPA of the changes by Dec. 31, 2020, as part of the annual reporting for their certification program.

Changes are

- effective until no later than Dec. 31, 2021.
- revocable up to 90 days.
- consistent with pesticide labeling and 40 CFR 171.

Changes may not

- significantly diminish applicator competency.
- undermine future certification activities.

No pre-approval required if conditions met but SLAs must notify EPA in annual report due Dec. 31, 2020. (See guidance for information to report.)

As an FYI, since release of the memo, HQ (OPP) has had meetings with co-regulators/state partners: AAPSE, AAPCO BOD, PREP for the state enforcement - where we generally went over the memo and answered questions.

More info and full policy linked here: <https://www.epa.gov/pesticides/epa-releases-temporary-guidance-regarding-certification-pesticide-applicators-during>

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From: Perrin, Rebecca <Perrin.Rebecca@epa.gov>
Sent: Thursday, September 10, 2020 3:01 PM
To: Messina, Edward <Messina.Edward@epa.gov>
Cc: Striegel, Megan <Striegel.Megan@epa.gov>
Subject: RE: Couple of quick questions

I can share the last thing I had on dicamba the rest are just questions that I am hoping someone knows the answer off the top of their head. Thanks and sorry for the last minute request on some of these clarification questions.

Rebecca Perrin
Region 8 Agriculture Advisor | Office of the Regional Administrator | USEPA
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From: Messina, Edward <Messina.Edward@epa.gov>
Sent: Thursday, September 10, 2020 12:49 PM
To: Perrin, Rebecca <Perrin.Rebecca@epa.gov>
Cc: Striegel, Megan <Striegel.Megan@epa.gov>
Subject: RE: Couple of quick questions

ok

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From: Perrin, Rebecca <Perrin.Rebecca@epa.gov>
Sent: Thursday, September 10, 2020 2:02 PM
To: Messina, Edward <Messina.Edward@epa.gov>
Cc: Striegel, Megan <Striegel.Megan@epa.gov>
Subject: RE: Couple of quick questions

As soon as you could get it to us, but let us know if you need more time and we will sort it out. Not looking for new materials just the most recent.

Rebecca Perrin
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From: Messina, Edward <Messina.Edward@epa.gov>
Sent: Thursday, September 10, 2020 11:34 AM
To: Perrin, Rebecca <Perrin.Rebecca@epa.gov>

Cc: Striegel, Megan <Striegel.Megan@epa.gov>

Subject: RE: Couple of quick questions

When do you need these?

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From: Perrin, Rebecca <Perrin.Rebecca@epa.gov>

Sent: Thursday, September 10, 2020 1:31 PM

To: Messina, Edward <Messina.Edward@epa.gov>

Cc: Striegel, Megan <Striegel.Megan@epa.gov>

Subject: Couple of quick questions

Importance: High

Ed,

I apologize for the last minute nature of this request but I have a few questions I needed some clarification on so Greg and Carrie know the most recent status on these items.

- Dicamba – We have been informed that they will be asked question on live radio about this topic next week. I wanted to check in and see if we can get the most recent desk statement or if the best info to speak from is still the press releases.
- The last info I saw about Plant Regulators and Biostimulants proposed guidance was that the comment period closed in July 2019. Are we still reviewing feedback? Or did we do a soft release and I missed something? Do we plan to announce anything related to this while Carrie and Greg (R8 RA) are in ND next week?
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- Regarding the WPS proposed AEZ revision, the last briefing paper I saw on this was that we were targeting Sept 2020 for finalization of the AEZ changes. Is that still the case? If not, are we thinking fall 2020? Winter 2020? Something entirely different?
- Do you have recent talking points or desk statement related to the COVID-19 and C&T memo below? Carrie and Greg are meeting with ND Ag Commissioner Doug Goehring. I want to make sure we are communicating how you want on this topic.
https://www.epa.gov/sites/production/files/2020-07/documents/covid-19-ocspp-pesticide-ct-statement_2020-07-27.pdf.

Thanks.

Rebecca Perrin

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Message

From: Messina, Edward [Messina.Edward@epa.gov]
Sent: 8/26/2020 2:23:11 AM
To: Goodis, Michael [Goodis.Michael@epa.gov]
Subject: RE: Dicamba

I'm free at 1:30pm

Ed Messina, Esq.
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From: Goodis, Michael <Goodis.Michael@epa.gov>
Sent: Tuesday, August 25, 2020 9:30 PM
To: Messina, Edward <Messina.Edward@epa.gov>
Subject: FW: Dicamba

Ed - can we find time to chat about this tomorrow?

Michael L. Goodis, P.E.
Acting Deputy Director for Programs
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703-308-8157

From: Ford Baldwin <ford@weedconsultants.com>
Sent: Tuesday, August 25, 2020 1:11 PM
To: Messina, Edward <Messina.Edward@epa.gov>; Goodis, Michael <Goodis.Michael@epa.gov>
Subject: Fwd: Dicamba

Sent from my iPhone

Begin forwarded message:

From: Ford Baldwin <Ford@weedconsultants.com>
Date: August 25, 2020 at 9:47:25 AM CDT
To: keigwin.richard@epa.gov, William Chism <chism.bill@epa.gov>, Daniel Kenny <Kenny.Dan@epa.gov>
Subject: Dicamba